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TEXAS WILDERNESS ACT OF 1984

SEPTEMBER 18 (legislative day, SEPTEMBER 17), 1984.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany H.R. 3788]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (H.R. 3788) to designate various areas as components of the National Wilderness Preservation System in the national forests in the State of Texas, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

SHORT EXPLANATION

The bill, as reported by the Committee, would designate 5 areas (totaling approximately 34,346 acres) in the national forests in the State of Texas as wilderness areas and as components of the National Wilderness Preservation System. The bill provides for the Secretary of Agriculture to administer the areas designated as wilderness by the bill in accordance with the provisions of the Wilderness Act, to promptly file maps and legal descriptions of the designated areas with appropriate committees of Congress, and to make the maps and descriptions available for public inspection. The bill would encourage the Secretary to exchange National Forest System lands in Texas for lands owned by Temple-Eastex Incorporated that are intermingled with Federal lands in the Indian Mounds and Upland Island Wilderness areas. The bill would also give purchasers the option to cancel, within 90 days of enactment of the bill, existing timber sale contracts involving timber wholly or partially within the Indian Mounds, Upland Islands, or Little Lake Creek Wilderness areas without payment of damages by either party.

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Further, the bill contains language to ensure that certain National Forest System lands in the State of Texas not designated as wilderness by the bill are released for such uses as are deemed appropriate through the national forest management planning process. The bill also prohibits, unless expressly authorized by Congress, any further statewide roadless area review and evaluation of National Forest System lands in Texas for purposes of considering the wilderness suitability of such lands.

Committee Amendment

The Committee amendment to the bill strikes all after the enacting clause and inserts in lieu thereof an amendment in the nature of a substitute.

In addition to making technical and clerical changes in the language of the bill, the substitute—

(1) deletes approximately 54 acres from the proposed Indian Mounds Wilderness area on which there is an existing timber sale contract;

(2) deletes the requirement that the Secretary of Agriculture exchange specified National Forest System lands for specified lands owned by Temple-Eastex Incorporated that are intermingled with Federal lands in the proposed Indian Mounds and Upland Wilderness areas and instead encourages the Secretary to acquire, by exchange, the intermingled lands of Temple-Eastex using existing authorities;

(3) deletes the requirement that the Secretary terminate existing timber sale contracts within the proposed Indian Mounds, Upland, or Little Lake Creek Wilderness areas without cost to the purchasers and instead provides that the purchasers have the option to cancel the timber sale contracts within 90 days of enactment of the bill without payment of damages by either party, in which case moneys held by the Forest Service to pay for timber to be cut would be returned with interest.

Purpose and Need for Legislation

H.R. 3788 has as its purpose the designation of five new wilderness areas in the national forests in the State of Texas. The legislation is the result of a review by the United States Department of Agriculture conducted during the period of 1977 through 1979 and termed the second roadless area review and evaluation (RARE II). That study examined the lands of the National Forest System nationwide and, through the final environmental impact statement issued by the Department of Agriculture in January 1979, recommended designation of certain of these lands as wilderness, including three of the areas included in the bill.

H.R. 3788 will also ensure that national forest lands in Texas not designated as wilderness are released for such uses as are determined appropriate through the national forest land management planning process.

WILDERNESS DESIGNATIONS

The national forest lands that would be designated as wilderness by H.R. 3788 total approximately 34,346 acres and are located in the eastern part of Texas. Although Texas is the largest State in the lower 48 States, at the present time there is only 1 area of wilderness designation in Texas and that is located in West Texas about 600 miles from the proposed wilderness areas in the bill.

East of the five areas designated as wilderness would become part of the National Wilderness Preservation System. They would be managed by the Forest Service under provisions of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131-1136).

A description of the wilderness proposals of the bill follows:

Turkey Hill Wilderness

This 5,400-acre proposed wilderness is located in the Angelina National Forest some 30 miles east of Lufkin, Texas. It consists of rolling hill land dissected by several creeks containing bottomland covered with large specimens of beech, magnolia, pine, and wild azaleas. Portions of the area are rich in coral root and southern twayblade orchids. The eastern half of the proposed wilderness was recommended for wilderness by the Forest Service during RARE II. H.R. 3788 will augment the Forest Service proposal by including some 2,400 acres in the headwaters of Sandy Creek. This addition will diversify the proposed wilderness by incorporating upland longleaf pine stands and a forest representing a typical pine to beech gradation. Increasing the size of the wilderness will also maximize opportunities for hikers, hunters, and other sportsmen to obtain a primitive recreation experience.

Upland Island Wilderness

This proposed 2-unit wilderness containing 12,000 acres, will be the largest wilderness in East Texas and the most diverse. Upland Island represents a microcosm of the natural values and heritage of East Texas and contains the greatest known diversity of plant habitat in the State. Upland forest, sand hills, bogs, swamp and flood plains lie in close proximity and comprise a compact natural laboratory. Vegetation ranges from the seasonally inundated oak-palmetto flats of the Neches River bottom, to cypress, beech, and oak lining creek bottoms, to mixed pine-hardwood forests, and finally to open longleaf pine stands high on the ridges. The largest tree in the national forests of East Texas, a bald cypress, as well as the largest longleaf pines in the Nation, are found here. Numerous species of orchids, carnivorous plants, primitive ferns, and club mosses contribute to the diversity of the vegetation. Most of the birds, mammals, and reptiles (including the American alligator) found in East Texas inhabit the area. The proposed wilderness will afford outstanding opportunities for scientific research and education and will provide future generations with a spacious undisturbed nearly virgin series of ecosystems which can be used as a natural benchmark for comparing and studying the effects of man's influence on the environment in the eastern part of Texas.

The proposed wilderness also represents excellent opportunities for primitive recreation. The southern unit of the wilderness bor-

ders the Neches River and is accessible by boat or canoe, thereby providing an interesting mix of water and land based recreation. Hiking, hunting, camping, horseback riding, and other primitive recreation opportunities will also be enhanced by virtue of the area's relatively large size, diverse terrain, and the spacious open forest on the upland ridges. The area is readily accessible from nearby urban areas.

Big Slough

This 3,000-acre proposal was recommended for wilderness by the Forest Service in RARE II. The area consists predominantly of hardwood bottomlands abutting the Neches River and is a prime example of a southern hardwood forest ecosystem. Because a large portion of the area is periodically flooded by the Neches River, it has escaped previous logging, and many hardwood stands contain trees of unusual size and age, especially on the island lying between Big Slough and the Neches River. The bottomland provides an excellent habitat for the broad range of wildlife found in the area, including deer, beaver, and the endangered American alligator and red cockaded woodpecker.

Although relatively small, the area provides excellent hunting as well as opportunities for canoeing and fishing. The combined waterways of Big Slough and the Neches River afford a circular canoeing route unique in this part of the State.

Indian Mounds Wilderness

This proposed wilderness area contains 9,946 acres and lies adjacent to the Toledo Bend Reservoir on the Sabine River along the Texas-Louisiana border. The terrain consists of several sand hills offering views of the Reservoir, and numerous uplands and creek bottoms containing an unusual number of large trees, including at least four State champion trees. The magnolia-beech stands are possibly the finest remaining in the entire State. The area abounds in wildflowers in the spring. The usual array of Eastern Texas wildlife and plant species are abundant and the relatively large size of the proposed wilderness will help ensure that hunting, hiking, and other primitive recreation experiences are maximized. The area's location adjacent to Toledo Bend Reservoir will provide an excellent mix of water and land based recreation opportunities.

Some marks of development linger in the overall area such as roads and vehicle ways, two pipelines, old timber harvest areas, and abandoned oil and gas drilling sites. Under the bill, the proposed site is split into six units which are separated by narrow road or pipeline corridors. Thus, the marks of development within the boundaries of the proposed wilderness may revegetate to its natural state with the exception of those necessary for existing or future access and use.

The Committee proposal for this area deletes 54 acres from the area as contained in the House-passed bill. This deletion excludes an area on which there is an existing timber sale contract that is part of a sale immediately outside the proposed wilderness area. Since the sale area is so small, the Committee does not believe its exclusion will detract from the remainder of the wilderness area. The Committee also took into consideration the estimated $300,000

cost that would accrue to the Forest Service and foregone receipts to the Federal and State Governments should the sale not be completed.

Little Lake Creek Wilderness

This 4,000-acre proposed wilderness lies within easy access to Houston and is becoming increasingly popular for primitive recreation. The area comprises the core of the Little Lake Creek drainage and contains fine examples of oak and hickory bottomlands. A portion of the heavily used Lone Star Hiking Trail passes through the area as well as several other trails providing excellent access for primitive recreation.

The southern two-thirds of the area comprising approximately 2,700 acres, was recommended for wilderness by the Forest Service during RARE II. By adding approximately 1,300 acres in the headwaters of Little Lake Creek, the anticipated heavy recreation use will be spread out and will provide more protection for the Little Lake Creek Watershed.

LAND EXCHANGE

Both the Upland Island and Indian Mounds Wilderness proposals of H.R. 3788 contain significant amounts of private land owned by Temple-Eastex Incorporated. These lands are so situated within the proposed wilderness areas that their acquisition by the Forest Service would greatly enhance the overall wilderness values and form more manageable wilderness units.

Because of concern with the possible disparity in value of the lands required to be exchanged by the House-passed bill, the Committee proposal encourages the Secretary of Agriculture to acquire, by exchange, the intermingled lands of Temple-Eastex using the existing authorities available to the Secretary. This would ensure that any land exchange would be on a value-for-value basis with any difference in value being made up by a cash equalization payment.

The Secretary has adequate authority to carry out such land exchanges, and, in fact, the Forest Service and Temple-Eastex have already been discussing several proposed land exchanges, including some of those proposed in the House-passed bill, to consolidate land holdings. The Committee believes that the exchanges with Temple-Eastex would be beneficial in protecting the wilderness areas and making those areas more manageable. Therefore, while the authority to make the exchanges is discretionary with the Secretary, the Committee expects that the Secretary will work diligently to make the land exchanges with Temple-Eastex.

TERMINATION OF TIMBER SALES

The Indian Mounds, Upland Island, and Little Lake Creek wilderness proposals contain small amounts of acreage that are currently under timber sale contract. All of the timber has not been cut under such contracts. The Committee understands that, if given the opportunity, the purchasers would most likely cancel their sales. Thus, the Committee proposal provides the purchaser under any existing timber sale contract that provides for a sale

area lying wholly or partially within the boundaries of a wilderness area designated by the bill with the option to cancel the contract. Any such option would have to be exercised within 90 days after enactment of the bill. Cancellation would be without payment of damages by either party, but the purchaser would be returned any deposits, with interest, to the extent that any remain with the Forest Service.

The Committee believes that this approach is a way of resolving the issue of outstanding timber sales in the wilderness areas at minimal cost to the Federal Government, while at the same time protecting the wilderness values of the areas. Even if the sales were operated they would not substantially damage the wilderness value of the areas since most of the sales are thinning sales.

While the Wilderness Act precludes normal timber harvesting, the Act recognizes that there may be prior existing private rights on lands designated as wilderness. The existing timber sale contracts on lands to be designated as wilderness by this bill create such prior rights, and the Committee does not intend that these rights should be impaired. The Committee also does not intend that any performance of these timber contracts, at the option of the holders, will establish a precedent for timber harvesting in wilderness areas. Timber harvesting is not an acceptable practice in wilderness areas except in circumstances such as this, where prior rights exist, or those provided by the Wilderness Act.

SUFFICIENCY AND RELEASE LANGUAGE

Background

In 1924, when the U.S. Forest Service decided it should manage wilderness as one of the any uses to be made of the National Forest System, it established the Gila Wilderness Reserve in the Gila National Forest in New Mexico. The purpose was to keep some parts of the Nation's forests in the condition in which mankind had found them, both as scientific benchmarks against which civilization's works could be compared and as recreational refuges for people who wanted to temporarily get away from the stresses of civilization. During the next 40 years, the Forest Service administratively established more of these areas, mostly in the West, from which evidence of human technology and development are substantially excluded.

In 1964, this wilderness concept became national policy when Congress passed the Wilderness Act and established the National Wilderness Preservation System. That System incorporated the 9.1 million acres that had been set aside by the Forest Service over the previous 4 dacades. Generally, the Wilderness Act specifies that within wilderness areas there will be no roads, no timber harvesting, no structures or installations, and no use of motor boats or landing of aircraft. Each wilderness area was to be an area where man was a visitor who did not remain.

The Wilderness Act gave the Forest Service 10 years to complete studies of the national forest primitive areas—areas temporarily reserved from access pending study of their suitability for wilderness designation. In addition, Congress provided that no future wilderness could be created in the national forests, except by Act of

Congress. However, Congress did not preclude the management of lands within the National Forest System for primitive, roadless recreation, within the concept of multiple-use management.

As the Forest Service began its review of primitive areas within the national forests in the late 1960's to determine the suitability for wilderness designation of specific tracts, a number of problems arose in connection with established timber management plans. In many forests, after new sales were advertised, administrative protests were filed, charging that a particular sale would violate the statutory concept of multiple use. Usually, the allegation was that the proposed sale was in an area that should be designated as wilderness or that should be devoted to unstructured recreation with no harvesting of timber. As timber sales became tied up in such appeals and the orderly management of the national forests disintegrated, the Forest Service instituted the first roadless area review and evaluation (RARE I) as the planning process to resolve the problems.

By 1973, RARE I had resulted in the selection of 274 wilderness study areas containing approximately 12.3 million acres. The other roadless areas in the RARE I inventory, having been considered and rejected for possible wilderness designation, were not protected as wilderness and remained in their full multiple-use status.

The National Environmental Policy Act (NEPA) became law on January 1, 1970. It required the Executive Branch, before making any major decision having a significant impact on the human environment, to prepare an assessment of the environmental impact of the proposed action. The NEPA was the basis of a lawsuit filed in 1972, as the RARE I process was nearing completion, that charged that the Forest Service must prepare environmental impact statements on roadless areas that were supposedly returned to multiple-use management. The Federal District Court for the Northern District of California agreed that the agency was subject to the decisionmaking process prescribed by NEPA, and all development activities on the roadless areas were stopped. See *Sierra Club* v. *Butz*, Civ. No. 72-1445-SC (N.D. Cal. 1972) 3 Environmental Law Reporter 20071.

As a result of restricted sources of timber supplies, tremendous pressures were placed on the remaining National Forest System lands that remained open to timber harvesting. In some forests, timber sale levels dropped dramatically below the allowable cuts. In other forests, timber sale levels were maintained, but sales were concentrated on lands outside the RARE I roadless areas. In these forests, the concentration of sales at the full sales volume on a limited area produced fears that these available areas would be overcut to the detriment of land and watersheds.

It was obvious that a remedy was needed for this situation, and the Forest Service decided that a faster planning process was the answer. Thus, the second roadless area review and evaluation (RARE II) was formulated to expedite the planning process for roadless areas. RARE II began in June 1977 and was intended to survey the roadless and undeveloped areas within the National Forest System and to distinguish areas suitable for wilderness designation from those most appropriate for other uses. The areas found suitable for wilderness would be recommended for addition

to the National Wilderness Preservation System through congressional action. The remaining roadless lands would be allocated to nonwilderness uses determined under the multiple-use planning process, or allocated to further study.

On April 16, 1979, President Carter made final recommendations to Congress based on the review of 2,919 identified roadless areas encompassing 62 million acres in the National Forest System. The Administration recommended that wilderness designation be given to approximately 15.1 million acres of the original 62-million acre roadless inventory. Another 10.8 million acres of roadless lands were determined to require further planning before decisions were made on their future management. The balance of the areas, which totaled about 36 million acres, were allotted to nonwilderness, multiple-use management.

Much litigation has occurred since the RARE II recommendations. This has had a direct bearing on congressional consideration of wilderness legislation. In June 1979, the State of California challenged the RARE II wilderness and nonwilderness allocations on National Forest System lands in that State. *California* v. *Bergland*, 483 F. Supp 465 (E.D. Cal. 1980). The State and various environmental organizations which joined the lawsuit claimed that the RARE II final environmental impact statement was legally flawed. On January 8, 1980, the Federal district court agreed with the State's position, finding that the environmental statement for RARE II was deficient under the provisions of the National Environmental Policy Act. The Court ruled that a more site-specific analysis of wilderness qualities was required for 46 of the areas allocated for nonwilderness. Additionally, the Court found flaws in the RARE II analysis process. As a result, the Court enjoined any development in the 46 disputed areas, pending preparation of an adquate environmental impact statement. The major points of the district court ruling were affirmed by the Ninth Circuit Court of Appeals. *California* v. *Block*, 690 F. 2d 753 (9th Cir. 1982).

The ruling by the Court of Appeals that the RARE II environmental impact statement was deficient had a significant impact on Forest Service activities. Although the decision applied specifically only to the 46 roadless areas in California, it was binding on other Federal district courts in the Ninth Circuit (comprising the States of California, Oregon, Washington, Idaho, Montana, Nevada, Arizona, Alaska, and Hawaii) and could be cited in States outside the Ninth Circuit's jurisdiction. The reasoning of the decision produces uncertainty regarding the RARE II study for other States. Management of roadless areas not designated as wilderness is subject to challenge through administrative appeals and lawsuits. In fact, such challenges have occurred. There have been three lawsuits filed in the Northwest that rely extensively on *California* v. *Block*. In *Earth First* v. *Block* (Civil No. 83-6298-ME-RE, D. Oreg.), the United States District Court for the District of Oregon enjoined the Forest Service from taking or permitting any action which would be inconsistent with the wilderness character of a roadless area in Oregon until the requirements of *California* v. *Block* and the NEPA have been met. Similarly, in *Kettle Range Conservation Group* v. *Block* (Civil No. C-83-590-JLQ, E.D. Wash.), the Forest Service was enjoined from taking or permitting any action which

will change the wilderness characteristics of four roadless areas in Washington. In December 1983, the Oregon Natural Resources Council brought suit against the Forest Service in an attempt to enjoin any activity which would impair the wilderness characteristics of approximately 2.25 million acres of roadless lands in Oregon until the requirements of NEPA have been met. That suit is pending. *Oregon Natural Resources Council* v. *Block*, Civil No. 83-1902, D. Oreg.

In February 1983, Assistant Secretary of Agriculture John B. Crowell, Jr., announced that all roadless areas studies for wilderness potential during RARE II would be subject to reevaluation. This reevaluation was to be done as a part of the National Forest System land management planning process then underway for 120 national forest planning units and scheduled for completion in 1985.

The desire to avoid further wilderness study and to preclude litigation directed at stopping the continuation of management activities on roadless areas led to a search for a legislative solution. Provisions termed "sufficiency" and "release" language were the outcome of that search. Such language has appeared in legislation designating wilderness areas in Colorado, New Mexico, Alaska, Missouri, West Virginia, and Indiana. That language, which was generally patterned after the Colorado wilderness bill, continued to trouble a number of affected industry groups, and in an effort to address their concerns, Congress developed and agreed on a new version of the so-called "release" language, which is included in the bill.

The status of National Forest System areas designated for further planning by RARE II and lying east of the 100th meridian was also placed in doubt by a case originating in North Carolina. The Eastern Wilderness Act designated certain National Forest System lands as wilderness and designated other lands as wilderness study areas. That Act directed the Secretary of Agriculture to review the study areas for their suitability or nonsuitability for wilderness designation and to make recommendations to the President, including recommendations for wilderness study areas. In *Southern Appalachian Multiple Use Council* v. *Bergland*, (No. A-C-80-1, W.D. N.C.), a Federal district court ruled, in relying on the Eastern Wilderness Act, that the Secretary has no authority to administratively designate "further planning" areas (and thereby administratively withhold any management activities in the area pending the completion of the study and determination of the area's status), but only to *recommend* areas to be designated as wilderness study areas. The court also ruled that the Secretary could manage the areas recommended so as not to impair their suitability for wilderness, pending congressional action. The ruling had an effect on the land management planning process on eastern national forests (those affected by the provisions of the Eastern Wilderness Act) insofar as the evaluation of areas for wilderness suitability is concerned. Under the court's ruling, forest plans on national forests east of the 100th meridian cannot recommend areas for wilderness designation, rather they can only recommend to Congress that such areas be studied for their wilderness suitability.

Sufficiency and judicial review of the RARE II environmental statement

The bill contains language relating to the sufficiency of the RARE II final environmental impact statement. As previously discussed, the need for the language arises because of a Federal district court decision in *California* v. *Bergland, supra,* in which it was held that the RARE II environmental impact statement, as it applied to 46 areas considered for wilderness in California, had insufficiently considered the wilderness alternative for the areas. Activities that would impair the wilderness characteristics of the areas were enjoined until subsequent reconsideration of wilderness was completed. This action creates uncertainty over the management of some nonwilderness areas, where administrative or judicial appeals could halt some activities until adequate environmental impact statements are prepared. The Committee, in considering the bill, has reviewed the roadless areas in Texas. It believes that the RARE II final environmental impact statement, insofar as National Forest System lands in Texas are concerned, is sufficient, and, therefore, the bill provides that such environmental statement shall not be subject to judicial review.

Release, management, and future wilderness consideration of nonwilderness areas

The RARE II process during 1977 through 1979 took place concurrently with the development by the Forest Service of a new land management planning process mandated by the National Forest Management Act of 1976 (NFMA). That process requires the national forest land management plans to be reviewed and revised periodically to provide for a variety of uses on the land. During the review and revision process, the Forest Service is required to study a broad range of potential uses and options for each national forest. NFMA provides that the option of recommending land to Congress for inclusion in the National Wilderness Preservation System is only one of the many options that must be considered during the planning process for those lands which may be suited for wilderness designation. The Forest Service is presently developing the initial, or "first generation", plan for each national forest. These are the so-called "section 6" plans, and they are scheduled for completion by September 30, 1985. Upon implementation, these plans will be in effect for 10 to 15 years before being revised and updated.

One of the goals of RARE II was to consider the wilderness potential of National Forest System roadless areas. The Committee believes that further consideration of the wilderness option during development of the initial plans for the National Forest System roadless areas in Texas, as defined in section 5 of the bill, and during the period when the initial plan is in effect, would be duplicative of studies and reviews that have already been made by both the Forest Service and Congress. Therefore, the bill provides that the RARE II evaluation or the reference to certain other lands constitutes an adequate consideration of the suitability of these roadless areas for inclusion in the National Wilderness Preservation System and no further review by the Department of Agriculture shall be required prior to the revision of the initial land manage-

ment plan for the national forest. This provision is necessary to ensure that these lands will be considered as functioning units of the national forests and has the practical effect of releasing these lands for multiple uses other than wilderness.

The NFMA provides that a national forest management plan shall be in effect for no longer than 15 years before it is revised. The Forest Service regulations, however, provide that a forest plan "shall ordinarily be revised on a 10-year cycle or at least every 15 years." (36 CFR 219.10(g).) The language of the bill tracks these regulations.

By tying future review of the wilderness option to revision of initial plans, the Committee intends to make it clear, consistent with the NFMA and current Forest Service regulations, that amendments to a plan, including those that might result in a significant change in a plan, would not trigger the need for reconsideration of the wilderness option. The wilderness option does not need to be reconsidered until the Forest Service determines (1) based on a review of the lands covered by a plan, that conditions in the area covered by a plan have changed so significantly that the entire plan needs to be completely revised, or (2) that the statutory 15-year maximum life span of the plan is expiring.

A revision of a forest plan is a costly undertaking in terms of dollars and manpower and the Committee does not expect such an effort to be undertaken lightly. When required by changing conditions, the Forest Service should make every effort to address local changes in land management plans through the amendment process, reserving the revision option only for major, forest-wide changes in conditions.

For example, if a new powerline is proposed to be built across a forest, any modification of the applicable forest plan to permit the line to be built would be accomplished by an amendment, not a revision, and therefore the wilderness option would not have to be reexamined. Likewise, the construction of new range improvements or adjustments in livestock allotments for permittees would not constitute a revision. It is only when a proposed change in management would significantly affect overall goals or uses for the entire forest that a revision would be made. An example of such a situation is the recent eruption of Mt. St. Helens. Because it affected so much of the land in the Gifford Pinchot National Forest, including the forest's overall timber harvest schedule, the necessary changes in the applicable forest plan would likely be considered a revision of the plan. In this regard, the Committee notes that in the vast majority of cases the 10- to 15-year planning cycle established by the NFMA and in the existing regulations is short enough to accommodate most changes in circumstances without triggering more frequent plan "revisions". It is highly unlikely that conditions will change so dramatically during the 10- to 15-year planning cycle that anything more comprehensive than a plan amendment would be required.

It is not likely that primitive, semiprimitive, or motorized recreation use would change so rapidly over an entire national forest that the Forest Service or the Federal courts would be justified in concluding that the conditions in the forest are so significantly changed as to justify making a plan revision prior to the normal

10- to 15-year life span for the existing plan. For example, recreation use might increase in a specific area or areas resulting in changed conditions in the forest itself. In the judgment of the Forest Service, such changes could be met by amending the plan, as opposed to revising it. This is not to say that an increase in demand for recreation in a given area will automatically, in and of itself, constitute a valid requirement for even a plan amendment. In addition, it is not the Committee's intent, nor, in the judgment of the Committee, the intent of any Federal statute, to force the Forest Service into either plan amendments or revisions as a result of changes in use patterns in the national forests.

The Chief of the Forest Service has indicated that, in his view, most plans will be in existence for 10 years before they are revised. The Committee shares this view and anticipates that plans will not be revised in advance of their anticipated maximum life span absent extraordinary circumstances. The Committee understands and expects that the first generation plans will be completed by late 1985 in most cases and the time of revision for most plans will begin about 10 years from the date of implementation for each plan. Accordingly, the Committee expects that the wilderness option for any area will not be reexamined again until the plans have been in effect for 10 years, unless the area is specifically designated as a wilderness study area by Congress.

The Committee notes that administrative or judicial appeals may mean that some of the first generation plans will not actually be implemented until the late 1980's, and plan revisions would not take place until a 10-year period has elapsed from the date each plan is implemented. If the full 15 years allowed by NFMA elapses before a revision is made, the wilderness option may not in some cases be reviewed until the year 2000 or later.

The question has also arisen as to whether a revision would be triggered if the Forest Service is directed by the courts to modify or rework an initial plan, or if the Forest Service withdraws an initial plan to correct technical errors or to address issues raised by an administrative appeal. The Committee wants to make it as clear as possible that any reworking of an initial plan for such reasons would not constitute a revision of the plan and would not require the reconsideration of the wilderness option for the lands covered by the plan.

This position is based on the fact that court-ordered or administrative reworkings or modifications of a plan would most likely come about to resolve inadequacies in the preparation of the plan under the requirements of NFMA and other applicable laws. Since the NFMA, and the implementing regulations, specify that a plan revision will not occur when the Secretary finds that there has been a significant change in conditions in the forest planning unit, or at least once every 10 to 15 years, it is clear that such reworking or modification would not be a revision for at least two reasons: (1) the modification would not be the result of any significant change in conditions in the forest planning unit and (2) a plan must be properly prepared and implemented before it can be revised.

The fact that the wilderness option for roadless areas will be considered in the future during the planning process raises the hypothetical argument that areas not designated for wilderness must be

managed to preserve their wilderness attributes so that they may be considered for such designation in the future. This interpretation, if accepted as correct, would result in all roadless areas being kept in "de facto" wilderness status indefinitely. Such a requirement would be detrimental to the orderly management of nonwilderness lands and the goals of the Forest and Rangeland Renewable Resources Planning Act of 1974.

To eliminate any possible misunderstanding on this point, the bill provides that areas not designated as wilderness need not be managed for the purpose of protecting their suitability for future wilderness designation pending revision of the initial plans. The intent is that these lands be managed for multiple uses in accordance with the land management plan.

The Forest Service already has statutory authority to manage roadless areas for multiple uses other than wilderness. The Committee wishes to make clear, however, that study of the wilderness option in future generations of "section 6" plans is required only for those lands that may be suited for wilderness designation at the time of the development of such future plans. During the lifetime of each generation of plans, then, the forest land and other resources can, in fact, be put to the uses that are authorized in the plan. In short, one plan will remain in effect until the second plan is implemented, and the forest will be managed in accordance with the plan that is in effect, even if such management may result in the land no longer being suited for wilderness.

Thus, it is likely that areas evaluated for wilderness suitability in one generation of plans may not physically qualify for wilderness consideration by the time the next generation of plans is prepared. For example, the Committee notes that many areas that were studied for wilderness in the RARE II, recommended for nonwilderness, and released administratively in April of 1979, may no longer qualify as suitable wilderness study areas as a result of approved multiple-use activities having been carried out.

Under this provision, it is the Committee's intent and understanding that the Forest Service may conduct a timber sale in a roadless area being managed for multiple-use purposes other than wilderness and not be challenged on the basis that the area will be spoiled for consideration as wilderness in a future planning cycle. Once into a second-generation plan, the Forest Service may, of course, manage a roadless area according to that plan without the necessity of preserving the wilderness option for the third-generation planning process. Should the particular area still qualify for possible wilderness designation at the time of the third-generation planning process, which is likely in many cases, the wilderness option for the area would be considered at that time under the requirements of NFMA. In short, the wilderness option must be considered in each future planning generation for all of the areas in each planning unit that still possess the required wilderness attributes. There is no requirement, however, that these attributes be preserved for the purpose of maintaining the suitability of the affected areas for future evaluation as wilderness in the planning process.

In the Committee's judgment, the Forest Service is not required to manage multiple-use lands in a "de facto" wilderness manner.

Of course, the Forest Service can, if it determines such action appropriate, manage lands to preserve their natural undeveloped characteristics if the applicable plan calls for such management. Likewise, the Forest Service can, if through the land management planning process it determines such action appropriate, provide for other multiple uses on lands that have not been designated as wilderness or as wilderness study areas by Congress. The Forest Service should be able to manage all nonwilderness lands in the manner determined appropriate through the land management planning process.

However, the bill also provides the lands recommended for wilderness designation in future generations of land management plans must be managed to protect their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by NFMA, and other applicable law.

In arriving at this position, the Committee has carefully considered and balanced the wishes and concerns of many varied interest groups involved in this issue, and wishes to emphasize the vital importance of completing and implementing the forest plans in Texas and ending the state of uncertainty over appropriate land management that now exists in the national forests.

In order to eliminate the land management uncertainty with regard to as much of the National Forest System land in Texas as possible, the bill provides that the release and sufficiency provisions of the bill also apply to National Forest System roadless lands in Texas that are less than 5,000 acres in size.

No further statewide wilderness review

With regard to the possibility of the Forest Service undertaking future administrative reviews similar to RARE I and RARE II, since the National Forest Management Act of 1976 planning process is now in place, the Committee wishes to see the development of any future wilderness recommendations by the Forest Service take place only through that planning process, unless Congress expressly asks for additional evaluations through authorizing legislation. Therefore, the bill prohibits the Department of Agriculture from conducting any further statewide roadless area review and evaluation of National Forest System lands in Texas for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System. This provision does not prohibit the Forest Service from considering the wilderness option during a normal plan revision when the entire State is covered by a single plan.

COMMITTEE CONSIDERATION

HEARINGS

On Thursday, May 24, 1984, the Subcommittee on Soil and Water Conservation, Forestry, and Environment held a hearing on S. 2598 and H.R. 3788, the Texas wilderness legislation.

In his opening statement, Subcommittee Chairman Jepsen said that the compromise on release language made it possible for Con-

gress to complete work on the remaining wilderness bills during this session.

Members of the Texas delegation to testify on the legislation were Senator Lloyd Bentsen; Congressman Steve Bartlett, from the third Congressional District of Texas; and Congressman John W. Bryant, from the fifth Congressional District of Texas.

Each of the Members of Congress testified in favor of the legislation, pointing out that Texas has little wilderness and the designations made in the bills were relatively small.

Testifying for the Department of Agriculture was Mr. J. Lamar Beasley, Deputy Chief, Programs and Legislation, Forest Service, U.S. Department of Agriculture. Mr. Beasley stated that the Department of Agriculture strongly opposes the legislation because of the land exchanges and timber sale termination provisions contained in section 4 of the bills. He said the Department estimates the value of the national forest land to be traded at $1.6 million more than the private lands that would be acquired. He also said the bill would designate as wilderness far more land than was recommended by RARE II.

Mr. Beasley recommended that the bills be revised to simply direct the Secretary of Agriculture to expeditiously complete an appropriate exchange of privately owned lands within the two wilderness areas in question, using existing authorities, and recommended the timber sale provisions be struck from the bills.

Next to testify was a panel composed of Mr. Edward C. Fritz, Chairman, Texas Committee on Natural Resources, and Mr. R.H. Hufford, Executive Vice President, Texas Forestry Association. Mr. Fritz urged enactment of S. 2598 as introduced by Senators Bentsen and Tower, saying it represented a long process of compromise. Mr. Hufford said the Texas Forestry Association supports the recommendations made in RARE II. He also stated the Association supports the multiple-use concept of forest utilization, and urged the adoption of strong release language in the bill.

COMMITTEE MARKUP

The Committee met in open session on Thursday, September 13, 1984, to consider H.R. 3788.

In his opening statement, Chairman Helms noted that the Texas wilderness bill was just one of six bills to be considered by the Committee that would add new areas to the National Wilderness Preservation System. Consideration of these bills, together with the four wilderness bills considered by the Committee and signed into law earlier this year, indicates that the Committee takes seriously its responsibility to provide clear direction for forestry policy regarding wilderness and other matters. Chairman Helms noted that the preservation of these additional wilderness areas will leave a legacy that will provide unlimited opportunity for primitive recreation and enjoyment for those choosing to visit the areas.

Senator Huddleston questioned the Forest Service on their efforts to obtain the privately-held mineral rights on existing wilderness areas and whether the exercise of those rights is a growing problem. Douglas MacCleery, Deputy Assistant Secretary for Natural Resources and Environment of the Department of Agriculture,

responded that since most of the national forest lands in the eastern United States were acquired from private owners who retained the subsurface mineral rights, it would be very expensive to acquire all of those rights, and the Forest Service does not buy those rights when it makes new acquisitions. The Forest Service deals with this issue on a case-by-case basis, and if a private owner elects to exercise his mineral rights, the Forest Service looks at the impact it might have on the wilderness value and makes a decision as how best to proceed. This factor is also taken into consideration when the Department makes recommendations on which areas are appropriate for wilderness designation.

After a brief explanation of the bill, Chairman Helms, on behalf of Senators Tower and Bentsen, offered an amendment that would make several changes in the bill. In addition to making technical and clerical changes, the amendment would—

(1) delete approximately 54 acres from the proposed Indian Mounds Wilderness area on which there is an existing timber sale contract;

(2) delete the requirement that the Secretary of Agriculture exchange specified National Forest System lands for specified lands owned by Temple-Eastex Incorporated that are intermingled with Federal lands in the proposed Indian Mounds and Upland Island Wilderness areas and instead encourage the Secretary to acquire, by exchange, the intermingled lands of Temple-Eastex using existing authorities; and

(3) delete the requirement that the Secretary terminate existing timber sale contracts within the proposed Indian Mounds, Upland Island, and Little Lake Creek Wilderness areas without cost to the purchasers and instead provide that the purchasers have the option to cancel the timber sale contracts within 90 days of enactment of the bill without payment of damages by either party, in which case moneys held by the Forest Service to pay for timber to be cut would be returned with interest.

The amendment was adopted by voice vote.

By voice vote, the Committee ordered H.R. 3788 reported, as amended, with a recommendation that it pass.

Section-by-Section Analysis

Short title

Section 1 provides that the bill may be cited as the "Texas Wilderness Act of 1984".

Designation of wilderness areas

Section 2 designates certain National Forest System lands in the State of Texas, totaling approximately 34,346 acres, as wilderness areas and as components of the National Wilderness Preservation System as follows:

(1) approximately 5,400 acres in the Angelina National Forest, as generally depicted on a map entitled "Turkey Hill Wilderness—Proposed", dated March 1984, which shall be known as the Turkey Hill Wilderness;

(2) approximately 12,000 acres in the Angelina National Forest, as generally depicted on a map entitled "Upland Island Wilderness—Proposed", dated March 1984, which shall be known as the Upland Island Wilderness;

(3) approximately 3,000 acres in the Davy Crockett National Forest, as generally depicted on a map entitled "Big Slough Wilderness—Proposed", dated March 1984, which shall be knwon as the Big Slough Wilderness;

(4) approximately 9,946 acres in the Sabine National Forest, as generally depicted on a map entitled "Indian Mounds Wilderness—Proposed", dated September 1984, which shall be known as the Indian Mounds Wilderness; and

(5) approximately 4,000 acres in the Sam Houston National Forest, as generally depicted on a map entitled "Little Lake Creek Wilderness—Proposed", dated March 1984, which shall be known as Little Lake Creek Wilderness.

Maps and descriptions

Section 3 requires that, as soon as practicable after enactment of the bill, maps and legal descriptions of the areas designated as wilderness in the bill be filed by the Secretary of Agriculture with the House Committees on Agriculture and on Interior and Insular Affairs and with the Senate Committee on Agriculture, Nutrition, and Forestry. In addition, this section provides that the maps and descriptions shall have the same force and effect as if included in the bill, except that correction of clerical and typographical errors may be made by the Secretary. The maps and descriptions must be on file and available for public inspection in the Office of the Chief of the Forest Service.

Administration of wilderness

Section 4(a) requires that, subject to valid existing rights, each of the areas designated as wilderness by the bill be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act, except that any reference in those provisions to the effective date of that Act would be deemed to be a reference to the date of enactment of the bill.

Section 4(b) encourages the Secretary to expeditiously acquire by exchange from Temple-Eastex Incorporated certain lands that are intermingled with Federal lands in the Indian Mounds and Upland Island Wilderness ares. The lands acquired would become parts of the Sabine and Angelina National Forests and would be administered in accordance with the laws and regulations applicable to national forests and the National Wilderness Preservation System, as appropriate.

Section 4(c) provides that any purchaser under an existing timber sale contract wholly or partially within the boundaries of the Indian Mounds, Upland Island, or Little Lake Creek Wilderness areas designated by the bill shall be entitled, for 90 days following enactment of the bill, to enter into an agreement with the Secretary to mutually cancel the timber sale contract without payment of damages by either party if the contract is not in breach and if the purchaser has completed its contractual obligations to logical stopping points as determined by the Secretary after consul-

tation with the purchaser. Upon satisfaction of all such contract requirements, moneys held by the Forest Service for payment of timber to be cut under the contract is to be returned to the purchaser with interest payable from the date moneys were deposited with the Forest Service at the rate published for use under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611).

Effect of RARE II

Section 5(a) contains congressional findings to the effect that the Deparptment of Agriculture has completed the second roadless area view and evaluation (RARE II) and that Congress has made its own evaluation of national Forest System roadless areas in Texas, including reviewing the environmental impacts associated with alternative uses of these areas.

Section 5(b) provides that Congress determines and directs, with respect to the National Forest System lands in Texas, that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Texas, such final environmental statement shall not be subject to judicial review;

(2) to the extent such lands were reviewed in the RARE II or otherwise referenced in subsection (d), the RARE II review and evaluation or reference shall be considered to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System for the purposes of the initial land management plans required by law. Also, the Department shall not be required to review the wilderness option for such lands prior to revision of the initial land management plans but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a 10-year cycle, or at least every 15 years, unless, prior to that time, the Secretary finds that conditions in a unit have significantly changed;

(3) to the extent such lands were reviewed in the RARE II final environmental statement, or otherwise referenced in subsection (d) and not designated as wilderness, such nondesignated lands shall be managed for multiple-use purposes in accordance with land management plans under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, except that such lands need not be managed to protect their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans are implemented, areas not recommended for wilderness designation in any such revisions need not be managed to protect their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed to protect their suitability for wilderness designation as may be required by applicable law; and

(5) unless expressly authorized by Congress, the Department shall not conduct any additional statewide roadless area review and evaluation of such lands for the purpose of determining

the suitability of any additional areas for inclusion in the National Wilderness Preservation System.

Section 5(c) provides that, as used in the bill and in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, the term "revision" does not include an "amendment" to a plan.

Section 5(d) provides that the release provisions of the section also apply to National Forest System roadless lands in Texas that are less than 5,000 acres in size.

Administration Views

On June 1, 1984, Chairman Helms received a report from Secretary of Agriculture John R. Block expressing the Department's opposition to the enactment of H.R. 3788 and S. 2598 (the Senate companion bill) unless amended as suggested in the report. This report, along with the portion of the May 24, 1984, testimony to the Subcommittee on Soil and Water Conservation, Forestry, and Environment presented by Mr. J. Lamar Beasley, Deputy Chief for Programs and Legislation of the Forest Service, on H.R. 3788 and S. 2598 follow:

Department of Agriculture,
Office of the Secretary,
Washington, DC, June 1, 1984.

Hon. Jesse Helms,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

Dear Mr. Chairman: As you requested, here is our report on S. 2598, and on H.R. 3788, as passed by the House on May 8, 1984, bills "To designate various areas in the national forests in the State of Texas as components of the Wilderness Preservation System."

The Department of Agriculture strongly opposes enactment of S. 2598 and H.R. 3788 unless amended as recommended herein. The bills are identical, except that H.R. 3788 contains the recently developed Senate-House compromise release language in section 5.

S. 2598 and H.R. 3788, each cited as the "Texas Wilderness Act of 1984," would designate five areas on the National Forests in Texas as units of the National Wilderness Preservation System. The five units total 34,400 acres. Upon designation, the wilderness areas would be administered under the provisons of the Wilderness Act (78 Stat. 890). The designations would be subject to valid existing rights. Outstanding mineral rights, primarily for oil and gas development in the form of private ownership and leases, occur on the areas. Pipeline rights-of-way also occur on the areas.

The bills would also direct that an exchange of private lands occurring within the Indian Mounds and Upland Island areas for Federal lands elsewhere on the National Forest be made in order to manage the wilderness in an efficient and effective manner. This land exchange involves lands owned by the Temple-Eastex Corporation, some of which are outside the proposed wilderness areas. The U.S. would retain the mineral interests on the Federal lands to be exchanged.

The bills would also require the Secretary of Agriculture to terminate timber sales contracts within the boundaries of the Little Lake Creek, Upland Island, and Indian Mounds areas without cost to the buyers. The Secretary would be directed to terminate a contract with the St. Regis Paper Company and compensate this buyer by offering similar timber of equal volume and value.

The final section of the bills would provide for the legal and factual sufficiency of the RARE II Final Environmental Impact Statement in the State of Texas. This section also releases those lands which were reviewed by the Department of Agriculture in RARE II and recommended for uses other than wilderness from further wilderness consideration during the period of the initial National Forest Land Management Plan. S. 2598 contains language in use before the recent Senate-House compromise language was adopted. H.R. 3788 contains the new compromise language. We support the compromise language and recommend that section 5 of the House Act be adopted in lieu of the language now in section 5 of S. 2598.

The acreage of the five areas far exceeds the recommendations of the RARE II. That study, completed in 1979, recommended wilderness designation for three areas, totaling 8,790 acres. These three areas so recommended—Little Lake Creek, Big Slough and Turkey Hill—would also be designated by S. 2598. We would prefer that only these areas be designated as wilderness. The RARE II study recommended that the Indian Mounds area be considered as nonwilderness and the Upland Island area (identified as Graham Creek in RARE II) as further planning. We have concerns with the designation of these latter two areas as wilderness, particularly with regard to roads and other developments which occur within the areas; however, our major concerns are with the provisions of the bills dealing with land exchanges and timber sales. These provisions were added to H.R. 3788 after the Department of Agriculture had presented testimony on the bill and they are the basis for our opposition to the bills.

The land exchange mandated by the bills would require about 2,725 acres of National Forest land to be exchanged for about 2,735 acres of land owned by the Temple-Eastex Corporation. We agree with the desirability of acquiring these lands. Section 5 of the Wilderness Act encourages such exchanges. In fact, we had initiated discussions with the Temple-Eastex Corporation concerning land exchange for some of these tracts before the land exchange provisions were inserted in H.R. 3788. However, this exchange of nearly equal land areas has several objectionable features. We estimate the value of the National Forest land, based on recent comparable land sales in the area, to be as much as $1.6 million more valuable than the private lands. Our estimates of value of the private lands considered their potential for recreation and subdivision development. The difference in value is mainly attributable to the larger volume and better quality of the timber stands on the National Forests lands.

Existing authorities, under which the Forest Service regularly exchanges land with private parties in order to consolidate National Forest holdings, require an equal value transaction, based on fair market value. We strongly recommend, therefore, that the bill be amended to provide that any land exchange be carried out

under current statutory authority. This would necessitate a reduction in the amount of National Forest System land to be included in the exchange. The bills require that the land exchange would have to be completed within 90 days, a virtual impossibility due to the time required to complete title searches and perform necessary surveys. These actions would require a minimum of 180 days. Mineral interests would not be a part of the land exchange. Mineral interests should be a part of the exchange, if both parties agree and the mineral values are included in determining the value of the lands exchanged. The limitation excluding minerals from exchange should be deleted from the bills.

The land exchange would appear to convey private lands in excess of that needed to remove the inholding within the proposed wilderness area. Based on the tract numbers specified in the bills, we find that the tracts lie both within and outside the wilderness area. In some tracts, as much as 100 acres of the private land are outside the boundary of the area. The bills should specify that only lands primarily within the proposed areas are to be acquired by exchange.

We enclose a recommended amendment to resolve our concerns with the exchange.

The provision requiring termination of timber sales already under contract in three of the areas would affect four sales. Cutting is underway on one sale; roads have been constructed prior to cutting on another. No action has occurred on the other two. The Department of Agriculture would be required to compensate the buyer of one of these sales with timber elsewhere on the National Forest of approximately equal volume and value. The form of compensation payable for terminating the other three sales is not specified and presumably would be handled under the terms of the timber sale contract. Damages to be paid by the Government under the terms of these contracts would cover purchaser's out-of-pocket expenses incurred in connection with the sale. The sale on which road construction already has occurred has accumulated credits to the purchaser's account totaling $87,534, which would have to be paid to the purchaser. All the purchasers may also be entitled to receiving payment for costs of obtaining replacement timber. Terminating the sales thus will be costly. We believe that the timber sale areas, both those where cutting is underway and where harvesting has not yet begun, should be deleted from the areas to be designated as wilderness. We have provided the Committee with maps with our proposed boundary changes. With these boundary changes the language in section 4(d) should be deleted.

While we support the efforts to establish wilderness in the National Forests in Texas, we cannot accept legislation that contains the land exchange and timber sale termination provisions. Unless these issues can be resolved, we strongly urge that S. 2598 and H.R 3788 not be enacted.

The costs required to implement the provisions of the bill would be higher than those we normally encounter in wilderness legislation. We estimate that costs of planning, surveying and posting the boundaries, and related activities required to establish the wilderness would be approximately $500,000 over the next 5 years. The extensive boundaries involved in the wilderness areas are a pri-

mary reason for these high costs. Administrative costs of completing the land exchanges as set forth in the bill within the time period prescribed would be about $12,000. This estimate recognizes that, because of the limited time allowed, certain activities normally carried out in land exchanges, such as complete surveys, would not be done. If normal exchange procedures were followed, the costs would rise to to $84,000. Terminating the timber sales as required by the bills would cost about $257,000. This includes $157,000 for administrative costs of terminating the contracts (including the $87,534 of earned purchaser credit) and locating the replacement timber, and an estimated potential of $100,000 for damages.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK, *Secretary.*

Enclosure.

USDA RECOMMENDED AMENDMENTS—S. 2598/H.R. 3788

1. On page 4, beginning on line 9 following "Accordingly,", delete all that follows through the period on line 12, page 5 and insert "the Secretary of Agriculture is encouraged to expeditiously acquire by exchange the intermingled lands owned by Temple-Eastex Incorporated. The lands acquired by the United States under the provisions of this section shall become parts of the Sabine and Angelina National Forests respectively and shall be administered in accordance with the laws, rules, and regulations applicable to the National Forest System and National Wilderness Preservation System, as appropriate.".

2. Delete subsection (d) of section 4 in its entirety.

3. Delete Section 5 in its entirety and substitute the language contained in the Senate-House compromise on release/sufficiency language.

STATEMENT OF J. LAMAR BEASLEY, DEPUTY CHIEF, PROGRAMS AND LEGISLATION, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Before The Subcommittee on Soil and Water Conservation, Forestry and Environment Committee on Agriculture, Nutrition and Forestry United States Senate

Concerning S. 2590/H.R. 4263, S. 2551/H.R. 5076, S. 2598/H.R. 3788 and S. 1754, May 24, 1984

Mr. Chairman and members of the subcommittee, thank you for the opportunity to join with the Subcommittee in its deliberation of several bills that would designate portions of the National Forests in Tennessee, Pennsylvania and Texas as components of the National Wilderness Preservation System. With the exception of the sufficiency and release language, the House-passed bills are nearly identical to their Senate counterparts. The House-passed bill H.R. 3788, designating wilderness in Texas, contains the recently adopted Senate-House compromise language on release of nonwilderness

areas. We prefer that language over that in the introduced Senate versions and urge its incorporation into the Pennsylvania and Tennessee bills.

S. 2598/H.R. 3788—The "Texas Wilderness Act of 1984"

With regard to S. 2598 and H.R. 3788, the Department of Agriculture has major objections to these bills, particularly with regard to the land exchanges and timber sale termination provisions in section 4. Hence, we must strongly oppose enactment of either bill unless these provisions are substantially revised or deleted.

Both bills would designate five wilderness areas on the Texas National Forests, the first such designations on this Forest and the first wilderness areas to be established in east Texas. About 34,400 acres are involved. We support the establishment of appropriate wilderness areas in east Texas. However, this designation is far greater than that included in the RARE II study, which recommended designation of three areas totaling 8,790 acres. The three areas so recommended—Little Lake Creek, Big Slough and Turkey Hill—although modified, would be designated by the bill. The Indian Mounds areas of 10,000 acres was recommended for nonwilderness, and a portion of the Upland Island area (known as Graham Creek in RARE II), was recommended for further planning. We have concerns with the designations of these latter two areas, particularly with regard to roads and other development that are present in them. While we feel it inappropriate that these areas be designated, our major objection, and the principal reason for opposing the bills, is the land exchanges and timber sale terminations that would occur on these two areas and on the Little Lake Creek area. These provisions were added to H.R. 3788 by the House Interior and Insular Affairs Committee after the Department of Agriculture testified on the bills. We were not involved in their consideration nor asked to provide an evaluation of the appropriateness of their inclusion in the bill.

The land exchange mandated by the bills would require about 2,725 acres of National Forest land to be exchanged for about 2,735 acres of land owned by the Temple-Eastex Corporation, a forest products manufacturing concern headquartered in Diboll, Texas. We agree with the desirability of land exchanges with this corporation. Their holdings and those of the National Forest are intermingled and exchanges to consolidate holdings would be mutually beneficial. We had already initiated discussions with the company on some of these lands and other lands, before the exchange provisions were inserted in the bill. We would also support the exchanges on the basis that section 5 of the Wilderness Act encourages such exchanges. However, this land exchange, involving nearly equal acres, has several objectionable features. We should also note that other private land holdings would remain in the wilderness areas, were this exchange to be made.

We estimate the value of the National Forest land, based on preliminary appraisals that consider recently obtained transaction evidence from comparable land sales in the area, to be as much as $1.6 million more valuable than the private lands. The difference in value is mainly attributable to the larger volume and better quality of the timber stands on the National Forest lands. Our ex-

aminations of value of the private lands did consider their potential for recreation and subdivision development. A tract lying near the Texas side of the Toledo Bend Reservoir has been identified as possibly having such potential. In our consideration of the physical and market conditions of the tract, we determined that such use is not practical and that the highest and best use of the tract is as timberland. The other tracts are not near the reservoir and are not desirable for development.

The Forest Service regularly carries out land exchanges with private parties under several authorities. These require an equal value transaction, based on fair market value. We strongly recommend that any land exchange envisioned by the bills to reduce private inholdings in the wilderness areas be carried out under existing authorities. This would require a reduction in the acreage of National Forest System land to be included.

The bills would require the land exchanges to be completed within 90 days. Such a severe time constraint would preclude several actions normally associated with land exchanges. We recognize that the bills contemplates this "short-cut" procedure, but nevertheless believe that some actions, such as a survey of the tracts, are essential. Such actions would require a minimum of 180 days. The bills preclude an exchange of mineral interests. We disagree with this. These interests should be a part of the exchange, if both parties agree, and the mineral interests are included in the value of the lands exchanged. This would be accomplished if the exchange were made under existing authorities.

The exchange provision in the bills appears to convey private lands in excess of that needed to remove the inholdings within the proposed wilderness areas. We find that, based on the tract numbers specified in the bills, the tracts lie both within and outside the wilderness areas. We estimate that of the 2,735 acres of the company lands to be exchanged, only 2,163 acres lie inside the proposed areas and 572 acres are outside the areas.

Because of these several concerns, we urge the Subcommitte to revise the provision in section 4(a) of the bills to simply direct the Secretary of Agriculture to expeditiously complete an appropriate exchange of privately owned lands within the two wilderness areas under existing authorities.

Section 4(b) of the bills would require termination of timber sales already under contract in three of the areas to be designated. This would affect sales to four purchasers. Cutting is underway on one sale; roads have been constructed prior to cutting on another. No action has occurred on the other two, with regard to that portion of the sale within the area. Compensation for one sale is specified in the bill—the Department of Agriculture would be required to provide the buyer, the St. Regis Paper Company, with timber elsewhere on the National Forest of approximately equal volume and value. Compensation for terminating the other three sales would presumably be handled under terms of the timber sale contract. These would require payment of damages by the Government that would cover the purchaser's out-of-pocket expenses incurred in connection with the sale. Purchasers may also be entitled to reimbursement of costs of obtaining replacement timber. The sale on which road construction has been completed and the purchaser has

accumulated credits in the amount of $87,534, would require reimbursement of those credits. Terminating the sales will be costly; we estimate a total of $257,000, including administrative costs and damages.

We believe a more appropriate action would be to delete the timber sale areas from the bills. We have provided the Subcommittee with maps showing these areas with our recommendations.

The costs required to implement the provisions of S. 2598 and H.R. 3788 would be higher than those we normally encounter. We estimate that the necessary planning, and the surveying and posting of the wilderness boundaries and related activities, would cost $500,000 over the next 5 years. This is due primarily to the extensive boundaries involved—there are approximately 140 miles of boundaries around the 5 areas—and the need to close and obliterate roads.

Mr. Chairman, we want to assure the Subcommittee that we support some wilderness designations in east Texas, and encourage you to act favorably on legislation to do so. However, we cannot accept legislation that contains the land exchange and timer sale termination requirements. Unless these issues can be resolved—and we will work with you to accomplish this—we must very strongly oppose the enactment of S. 2598 and H.R. 3788.

Cost Estimate

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that the enactment of H.R. 3788 would result in a cost to the Federal Government of approximately $100,000 over the next 5 fiscal years. In addition, receipts from the sale of timber could be reduced by less than $1 million per year. However, small savings in land management planning costs over the next 3 years will result from certain areas being released from further wilderness review during the period of the initial land mangement plans.

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate, which is consistent with the Committee's cost estimate:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 17, 1984.

Hon. Jesse A. Helms,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 3788, the Texas Wilderness Act of 1984, as ordered reported by the Senate Committee on Agriculture, Nutrition and Forestry, September 13, 1984.

This bill adds 34,346 acres of land in Texas to the national wilderness preservation system. Based on information from the National Forest Service (NFS), we estimate that additional costs to the federal government for surveying, planning and related activities necessary to implement the wilderness withdrawals will be approximately $100,000 over the five fiscal years beginning with 1985.

This bill also encourages the Secretary of Agriculture to acquire by exchange intermingled lands owned by Temple-Eastex, Incorporated. To date, no appraisal has been made of the lands that might be exchanged.

According to the provisions of the National Wilderness Preservation System Act, all timber in areas designated as units of the antional wilderness preservation system is removed from the timber base of the national forest in which is it located. This results in a reduction of the annual potential yield of the forest. The annual loss of timber receipts resulting from this bill is expected to be less than $1 million per year. Any such losses would be at least partically offset by reduced payments to state and local governments, and by a reduction in timber purchaser road construction credits.

Lands designated as wilderness are also withdrawn from mineral activity under the terms of the National Wilderness Preservation Act. No significant loss of mineral receipts is expected to result from this bill, however, because mineral resoruces can be removed under valid existing rights.

All roadless areas in national forests not designated as wilderness or expressly excluded from further review by an act of Congress are currently being reevaluated for their suitability for inclusion in the national wilderness preservation system. H.R. 3788 removes from this review all roadless areas in Texas included in the Department of Agriculture's second Roadless Area Review and Evaluation (RARE II) during the period of the initial land management plan. This will result in a small savings in land management planning costs over the next three years.

Enactment of this bill would not significantly affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 3788. The bill would designate certain lands in the State of Texas as components of the National Wilderness Preservation System.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

Subject to valid existing rights, the Wilderness Act prohibits future harvesting of timber and future entry for mineral extraction on lands included in the National Wilderness Preservation System. Enactment of the bill will result in approximately 34,346 acres being placed in the National Wilderness Preservation System, and, thereby, will restrict uses other than wilderness on such land.

Wilderness designation will result in restricting private individuals' motorized use of public lands. Activities which have previous-

ly occurred, such as firewood gathering, motorized access for hunting and fishing, and trail bike riding, will be terminated.

A wilderness permit may be required of individuals using certain wilderness areas and, therefore, limited personal information would be collected in administering the program. It is anticipated that the impact on personal privacy would be minimal.

The bill will not result in any significant additional paperwork or recordkeeping requirements.

○

Calendar No. 1196

98TH CONGRESS
2d Session

SENATE

REPORT
98-615

TENNESSEE WILDERNESS ACT OF 1984

SEPTEMBER 18 (legislative day, SEPTEMBER 17), 1984.—Ordered to be printed.

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany H.R. 4263]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (H.R. 4263) to designate certain lands in the Cherokee National Forest, Tennessee, as wilderness areas, and to allow management of certain lands for uses other than wilderness, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

SHORT EXPLANATION

The bill, as reported by the Committee, would designate 3 areas (totaling almost 25,000 acres) in the Cherokee National Forest in the State of Tennessee as wilderness areas and as components of the National Wilderness Preservation System. The bill provides for the Secretary of Agriculture to administer the areas designated as wilderness by the bill in accordance with the provisions of the Wilderness Act, to promptly file maps and legal descriptions of the designated areas with appropriate committees of Congress, and to make the maps and descriptions available for public inspection.

Further, the bill contains language to ensure that certain National Forest System lands in Polk and Monroe Counties in Tennessee not designated as wilderness or for wilderness study by the bill are released for such uses as are deemed appropriate through the national forest management planning process. National forest lands in other counties in Tennessee are not covered by the bill.

The bill would also designate 2 areas (totaling approximately 7,800 acres) in the Cherokee National Forest in the State of Tennessee as wilderness study areas and require the Secretary to

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review the suitability of these areas for wilderness preservation during the preparation of the initial land management plan.

Committee Amendment

The Committee amendment to the bill strikes all after the enacting clause and inserts in lieu thereof an amendment in the nature of a substitute. In addition to making clerical changes in the text of the bill, the substitute incorporates the compromise release language agreed to earlier this year.

Purpose and Need for Legislation

H.R. 4263 has as its purpose the designation of three new wilderness areas in the national forests in the State of Tennessee. The legislation is the result of a review by the United States Department of Agriculture conducted during the period of 1977 through 1979 and termed the second roadless area review and evaluation (RARE II). That study examined the lands of the National Forest System nationwide and, through the final environmental impact statement issued by the Department of Agriculture in January 1979, recommended designation of certain of these lands as wilderness, including one of the areas that would be designated by H.R. 4263. Two of the areas were established as wilderness study areas by the Eastern Wilderness Act in 1975.

The bill would also require the Secretary of Agriculture to review two other areas in the Cherokee National Forest in Tennessee to determine their suitability for designation as wilderness.

The bill would ensure that national forest lands in Monroe and Polk Counties, Tennessee, not designated as wilderness or for wilderness study are released for such uses as are determined appropriate through the national forest land management planning process.

WILDERNESS DESIGNATIONS

The national forest lands that would be designated as wilderness by the bill total approximately 24,942 acres. They are located in the southern half of the Cherokee National Forest and constitute about 8 percent of the total acreage of that half of the forest. The bill does not address the lands in Tennessee which lie north and east of the Great Smoky Mountains National Park.

The three wilderness areas contain some of the finest, most pristine acreage in Tennessee. The areas include extremely rugged, scenic terrain and waterfalls and virgin timber that is infrequently found throughout the surrounding areas.

All of the areas designated as wilderness would become part of the National Wilderness Preservation System. They would be managed by the Forest Service under provisions of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131-1136).

A designation of the wilderness proposals of the bill follows:

Big Frog Wilderness

The proposed 5,055-acre wilderness lies along the Tennessee-Georgia border and will abut the existing 34,500-acre Cohutta Wil-

derness. This combined wilderness resource will be one of the largest in the Eastern United States. The bulk of the proposed wilderness was designated as a wilderness study area by Congress in the Eastern Wilderness Act (Public Law 93-622). The Big Frog Wilderness Study area was rated highest of the Cherokee National Forest roadless areas in the second roadless area review and evaluation (RARE II) for wilderness attributes. This high rating reflects Big Frog's generally undisturbed character, continuous vegetative cover, isolation, and rugged, visually appealing terrain. The Forest Service has completed extensive studies and public meetings on the area. With certain small additions, the area is recommended for wilderness by the Forest Service and the Administration.

Big Frog is part of the Blue Ridge Province of the southern Appalachians, and its geography is typical of that area. The terrain is rugged and steep, and the elevation ranges from 4,224 feet to only 1,480 feet. The proposal includes Big Frog Mountain with an elevation of 4,224 feet, making it the most prominent feature in Polk County, Tennessee, and the highest point in the southern Cherokee National Forest.

The area is a typical southern Appalachian, second growth forest of Virginia pine, upland hardwoods, and cove hardwoods. It is traversed by approximately 25 miles of hiking trails and due to the diversity of elevations and terrain contains interesting vegetation, virgin timber stands, and a rich variety of plants and animals, including game species. Due to the steep slopes dominating the bulk of the area, timber production potential is only average. The likelihood of finding significant minerals in the area is remote. A small portion of the proposed wilderness south of Double Spring Gap spills across the Georgia line and this permits the wilderness boundary to run along topographic features instead of the arbitrary State line.

Citico Creek Wilderness

This area, located about 10 miles northeast of Tellico Plains, Tennessee, contains approximately 16,000 acres and is the second largest RARE II inventory area in the State. It was also designated as a wilderness study area by the Eastern Wilderness Act in 1975 and rated above average for wilderness attributes in RARE II. The area is one of outstanding natural beauty and has been recommended for wilderness by the Forest Service and the Administration.

The area is part of the Blue Ridge Province, and is in the northern Unicoi Mountains. A long, high ridge on the eastern boundary and three steeply sloped ridges leading west from that main ridge dominate the area. The terrain is rugged with elevations ranging from 1,400 feet to 4,600 feet. More than 90 percent of the area has slopes exceeding 30 percent. The steep terrain is densely forested with 5 percent virgin timber. The vegetation consists of second growth mixed hardwood or pine stands, most in the 40- to 60-year age brackets. A network of streams and several entire watersheds flow through the area. Seven rare plant species are known to exist here and it contains several cascading waterfalls, one of which is 70 to 80 feet in height and is surrounded by a large tract of virgin hemlock and cove hardwoods.

The area is contiguous to the Joyce Kilmer-Slickrock Wilderness Area in North Carolina, and provides the potential for a unique, large wilderness area in the Southern Appalachians. Some 35 miles of hiking trails pass through the area and connect with the trail system in the adjacent Joyce Kilmer-Slickrock Wilderness. The Citico Creek wilderness designation will help alleviate the heavy recreation pressure and use on that area. Primary use of the Citico Creek area is for dispersed types of recreation such as hiking and hunting.

The proposed wilderness shelters numerous threatened plant species and rare animals, and has been designated a Black Bear Reserve by the State of Tennessee. The State believes that by closing old wood roads used by poachers and thus assuring more den trees as the forest matures, the effort to increase bear numbers will be substantially enhanced.

Due to the fact that the area lies within a 2-hour drive of two universities, and its relatively large size, it offers outstanding opportunities for scientific research and education.

The boundary for the proposed wilderness has been established so that the area will not conflict with the construction of the Tellico-Robbinsville highway. The map accompanying the legislation carefully denotes that the wilderness boundary will run 300 feet north of the centerline of the existing and proposed portions of the highway. Several parking areas along the highway have also been excluded.

Bald River Gorge Wilderness

Recommended for wilderness in RARE II, this 3,887-acre proposal comprises the highly scenic drainage of the Bald River and is located about 7 miles southeast of Tellico Plains, Tennessee. It includes the beautiful and unique Bald River Gorge which culminates in the spectacular 120-foot Bald River Falls. Excellent trout fishing abounds. The river also has several small falls, chutes, and rapids, and it is enclosed by a steep-walled gorge in the lower portion of the watershed. It is a popular swimming and recreation spot with local residents, and the hiking trail that follows the east bank of the river for over 3 miles provides excellent access into the area. Large white pine and hemlock grow on the banks of Bald River at many points, and the entire area's acreage is National Forest System land.

DESIGNATION OF WILDERNESS STUDY AREAS

Under the bill, two areas would be designated for wilderness study. The areas would be studied for wilderness suitability as part of the initial national forest land management planning effort which is targeted for completion in late 1985. The Committee notes that designation by Congress of wilderness study areas in the Eastern United States is necessary as a result of the decision in the case of *Southern Appalachian Multiple Use Council* v. *Bergland,* (No. A-C-80-1, W.D. N.C.). In that case, the U.S. District Court for the Western District of North Carolina held that the Eastern Wilderness Act did not give the Department of Agriculture authority

to designate wilderness study areas, only to recommend such designations to Congress.

A description of the wilderness study proposals of the bill follows:

Little Frog Wilderness Study Area

The proposed study area comprises approximately 4,800 acres north of Copperhill, Tennessee, and is highlighted by the long ridge of Little Frog Mountain, which provides scenic vistas of the surrounding hardwood forest. Two endangered plants are found in this area and numerous species of flora and fauna grow here which are of special concern. Two hiking trails traverse the area, and it is easily accessible from State Highway 64. The area was recommended for further wilderness evaluation by the Forest Service in the RARE II.

The bill specifies that the area is to be administered by the Secretary of Agriculture so as to maintain its presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System until Congress determines otherwise.

Big Frog Study Area

This study area consists of approximately 3,457 acres adjacent to the proposed Big Frog Wilderness. Its lower elevation terrain is of the same rugged nature as that within the wilderness and is traversed by several popular hiking trails. The area includes several scenic drainages and Licklog Ridge.

Upon conclusion of this wilderness study the Forest Service may manage the area in accordance with the uses recommended in its land management plan for the Forest.

BENTON-MACKAYE TRAIL

The Committee understands that several of the wilderness and wilderness study proposals covered by this legislation will be traversed by portions of the proposed Benton-Mackaye Trail. Portions of the trail are currently under construction, whereas other portions will merely involve the incorporation or upgrading of existing trails. Nothing in the wilderness or wilderness study designations of the bill should be construed as requiring rerouting of this trail outside the wilderness and wilderness study areas.

SUFFICIENCY AND RELEASE LANGUAGE

Background

In 1924, when the U.S. Forest Service decided it should manage wilderness as one of the many uses to be made of the National Forest System, it established the Gila Wilderness Reserve in the Gila National Forest in New Mexico. The purpose was to keep some parts of the Nation's forests in the condition in which mankind had found them, both as scientific benchmarks against which civilization's works could be compared and as recreational refuges for people who wanted to temporarily get away from the stresses of civilization. During the next 40 years, the Forest Service administratively established more of these areas, mostly in the West, from

which evidence of human technology and development are substantially excluded.

In 1964, this wilderness concept became national policy when Congress passed the Wilderness Act and established the National Wilderness Preservation System. That System incorporated the 9.1 million acres that had been set aside by the Forest Service over the previous 4 decades. Generally, the Wilderness Act specifies that within wilderness areas there will be no roads, no timber harvesting, no structures or installations, and no use of motor boats or landing aircraft. Each wilderness area was to be an area where man was a visitor who did not remain.

The Wilderness Act gave the Forest Service 10 years to complete studies of the national forest primitive areas—areas temporarily reserved from access pending study of their suitability for wilderness designation. In addition, Congress provided that no future wilderness could be created in the national forests, except by Act of Congress. However, Congress did not preclude the management of lands within the National Forest System for primitive, roadless recreation, within the concept of multiple-use management.

As the Forest Service began its review of primitive areas within the national forests in the late 1960's to determine the suitability for wilderness designation of specific tracts, a number of problems arose in connection with established timber management plans. In many forests, after new sales were advertised, administrative protests were filed, charging that a particular sale would violate the statutory concept of multiple use. Usually, the allegation was that the proposed sale was in an area that should be designated as wilderness or that should be devoted to unstructured recreation with no harvesting of timber. As timber sales became tied up in such appeals and the orderly management of the national forests disintegrated, the Forest Service instituted the first roadless area review and evaluation (RARE I) as the planning to resolved the problems.

By 1973, RARE I had resulted in the selection of 274 wilderness study areas containing approximately 12.3 million acres. The other roadless areas in the RARE I inventory, having been considered and rejected for possible wilderness designation, were not protected as wilderness and remained in their full multiple-use status.

The National Environmental Policy Act (NEPA) became law on January 1, 1970. It required the Executive Branch, before making any major decision having a significant impact on the human environment, to prepare an assessment of the environmental impact of the proposed action. The NEPA was the basis of a lawsuit filed in 1972, as the RARE I process was nearing completion, that charged that the Forest Service must prepare environmental impact statements on roadless areas that were supposedly returned to multiple-use management. The Federal District Court for the Northern District of California agreed that the agency was subject to the decisionmaking process prescribed by NEPA, and all development activities on the roadless areas were stopped. See *Sierra Club* v. *Butz,* Civ. No. 72–1445–SC (N.D. Cal. 1972) 3 Environmental Law Reporter 20071.

As a result of restricted sources of timber supplies, tremendous pressures were placed on the remaining National Forest System

lands that remained open to timber harvesting. In some forests, timber sale levels dropped dramatically below the allowable cuts. In other forests, timber sale levels were maintained, but sales were concentrated on lands outside the RARE I roadless areas. In these forests, the concentration of sales at the full sales volume on a limited area produced fears that these available areas would be overcut to the detriment of land and watersheds.

It was obvious that a remedy was needed for this situation, and the Forest Service decided that a faster planning process was the answer. Thus, the second roadless area review and evaluation (RARE II was formulated to expedite the planning process for roadless areas. RARE II began in June 1977 and was intended to survey the roadless and undeveloped areas within the National Forest System and to distinguish areas suitable for wilderness designation from those most appropriate for other uses. The areas found suitable for wilderness would be recommended for addition to the National Wilderness Preservation System through congressional action. The remaining roadless lands would be allocated to nonwilderness uses determined under the multiple-use planning process, or allocated to further study.

On April 16, 1979, President Carter made final recommendations to Congress based on the review of 2,919 identified roadless areas encompassing 62 million acres in the National Forest System. The Administration recommended that wilderness designation be given to approximately 15.1 million acres of the original 62-million acre roadless inventory. Another 10.8 million acres of roadless lands were determined to require further planning before decisions were made on their future management. The balance of the areas, which totaled about 36 million acres, were allotted to nonwilderness, multiple-use management.

Much litigation has occurred since the RARE II recommendations. This has had a direct bearing on congressional consideration of wilderness legislation. In June 1979, the State of California challenged the RARE II wilderness and nonwilderness allocations on National Forest System lands in that State. *California* v. *Bergland*, 483 F. Supp. 465 (E.D. Cal. 1980). The State and various environmental organizations which joined the lawsuit claimed that the RARE II final environmental impact statement was legally flawed. On January 8, 1980, the Federal district court agreed with the State's position, finding that the environmental statement for RARE II was deficient under the provisions of the National Environmental Policy Act. The Court ruled that a site-specific analysis of wilderness qualities was required for 46 of the areas allocated for nonwilderness. Additionally, the Court found flaws in the RARE II analysis process. As a result, the Court enjoined any development in the 46 disputed areas, pending preparation of an adequate environmental impact statement. The major points of the district court tuling were affirmed by the Ninth Circuit Court of Appeals. *California* v. *Block*, 690 F.2d 753 (9th Cir. 1982).

The ruling by the Court of Appeals that the RARE II environmental impact statement was deficient had a significant impact of Forest Service activities. Although the decision applied specifically only to the 46 roadless areas in California, it was binding on other Federal district courts in the Ninth Circuit (comprising the States

of California, Oregon, Washington, Idaho, Montana, Nevada, Arizona, Alaska, and Hawaii) and could be cited in States outside the Ninth Circuit's jurisdiction. The reasoning of the decision produces uncertainty regarding the RARE II study for other States. Management of roadless areas not designated as wilderness is subject to challenge through administrative appeals and lawsuits. In fact, such challenges have occurred. There have been three lawsuits filed in the Northwest that rely extensively on *California* v. Block. In *Earth First* v. *Block* (Civil No. 83-6298-ME-RE, D. Oreg.), the United States District Court for the District of Oregon enjoined the Forest Service from taking or permitting any action which would be inconsistent with the wilderness character of a roadless area in Oregon until the requirements of *California* v. *Block* and the NEPA have been met. Similarly, in *Kettle Range Conservation Group* v. *Block* (Civil No. C-83-590-JLQ, E.D. Wash.), the Forest Service was enjoined from taking or permitting any action which will change the wilderness characteristics of four roadless areas in Washington. In December 1983, the Oregon Natural Resources Council brought suit against the Forest Service in an attempt to enjoin any activity which would impair the wilderness characteristics of approximately 2.25 million acres of roadless lands in Oregon until the requirements of NEPA have been met. That suit is pending. *Oregon Natural Resources Council* v. *Block,* Civil No. 83-1902, D. Oreg.

In February 1983, Assistant Secretary of Agriculture John B. Crowell, Jr., announced that all roadless areas studied for wilderness potential during RARE II would be subject to reevaluation. This reevaluation was to be done as a part of the National Forest System land management planning process then underway for 120 national forest planning units and scheduled for completion in 1985.

The desire to avoid further wilderness study and to preclude litigation directed at stopping the continuation of management activities on roadless areas led to a search for a legislative solution. Provisions termed "sufficiency" and "release" language were the outcome of that search. Such language has appeared in legislation designating wilderness areas in Colorado, New Mexico, Alaska, Missouri, West Virginia, and Indiana. That language, which was generally patterned after the Colorado wilderness bill, continued to trouble a number of affected industry groups, and in an effort to address their concerns, Congress developed and agreed on a new version of the so-called "release" language, which is included in the bill.

The status of National Forest System areas designated for further planning by RARE II and lying east of the 100th meridian was also placed in doubt by a case originating in North Carolina. The Eastern Wilderness Act designated certain National Forest System lands as wilderness and designated other lands as wilderness study areas. That Act directed the Secretary of Agriculture to review the study areas for their suitability or nonsuitability for wilderness designation and to make recommendations to the President, including recommendations for wilderness study areas. In *Southern Appalachian Multiple Use Council* v. *Bergland,* (No. A-C-80-1, W.D. N.C.), a Federal district court ruled, in relying on the Eastern Wil-

derness Act, that the Secretary had no authority to administratively designate "further planning" areas (and thereby administratively withhold any management activities in the area pending the completion of the study and determination of the area's status), but only to *recommend* areas to be designated as wilderness study areas. The court also ruled that the Secretary could manage the areas recommended so as not to impair their suitability for wilderness, pending congressional action. The ruling had an effect on the land management planning process on eastern national forests (those affected by the provisions of the Eastern Wilderness Act) insofar as the evaluation of areas for wilderness suitability is concerned. Under the court's ruling, forest plans on national forests east of the 100th meridian cannot recommend areas for wilderness designation, rather they can only recommend to Congress that such areas be studied for their wilderness suitability.

Sufficiency and judicial review of the RARE II environmental statement

The bill contains language relating to the sufficiency of the RARE II final environmental impact statement. As previously discussed, the need for the language arises because of a Federal district court decision in *California* v. *Bergland, supra,* in which it was held that the RARE II environmental impact statement, as it applied to 46 areas considered for wilderness in California, had insufficiently considered the wilderness alternative for the areas. Activities that would impair the wilderness characteristics of the areas were enjoined until subsequent reconsideration of wilderness was completed. This action creates uncertainty over the management of some nonwilderness areas, where administrative or judicial appeals could halt some activities until adequate environmental impact statements are prepared. The Committee, in considering the bill, has reviewed the roadless areas in Monroe and Polk Counties, Tennessee. It believes that the RARE II final environmental impact statement, insofar as National Forest System lands in Monroe and Polk Counties, Tennessee, are concerned, is sufficient, and, therefore, the bill provides that such environmental statement shall not be subject to judicial review.

Release, management, and future wilderness consideration of nonwilderness areas

The RARE II process during 1977 through 1979 took place concurrently with the development by the Forest Service of a new land management planning process mandated by the National Forest Management Act of 1976 (NFMA). That process requires the national forest land management plans to be reviewed and revised periodically to provide for a variety of uses on the land. During the review and revision process, the Forest Service is required to study a broad range of potential uses and options for each national forest. NFMA provides that the option of recommending land to Congress for inclusion in the National Wilderness Preservation System is only one of the many options that must be considered during the planning process for those lands which may be suited for wilderness designation. The Forest Service is presently developing the initial, or "first generation", plan for each national forest. These

are the so-called "section 6" plans, and they are scheduled for completion by September 30, 1985. Upon implementation, these plans will be in effect for 10 to 15 years before being revised and updated.

One of the goals of RARE II was to consider the wilderness potential of Natonal Forest System roadless areas. The Committee believes that, except as to those areas designated for wilderness study upon enactment of the bill, further consideration of the wilderness option during development of the initial plans for the National Forest System roadless areas in Monroe and Polk Counties, Tennessee, as defined in section 5 of the bill, and during the period when the initial plan is in effect, would be duplicative of studies and reviews that have already been made by both the Forest Service and Congress. Therefore, the bill provides that the RARE II evaluation or the reference to certain other lands constitutes an adequate consideration of the suitability of these roadless areas for inclusion in the National Wilderness Preservation System and no further review by the Department of Agriculture shall be required prior to the revision of the initial land management plan for the national forest. This provision is necessary to ensure that these lands will be considered as functioning units of the national forests and has the practical effect of releasing these lands for multiple uses other than wilderness.

The NFMA provides that a national forest management plan shall be in effect for no longer than 15 years before it is revised. The Forest Service regulations, however, provide that a forest plan "shall ordinarily be revised on a 10-year cycle or at least every 15 years." (36 CFR 219.10(g)). The language of the bill tracks these regulations.

By tying future review of the wilderness option to revision of initial plans, the Committee intends to make it clear, consistent with the NFMA and current Forest Service regulations, that amendments to a plan, including those that might result in a significant change in a plan, would not trigger the need for reconsideration of the wilderness option. The wilderness option does not need to be reconsidered until the Forest Service determines (1) based on a review of the lands covered by a plan, that conditions in the area covered by a plan have changed so significantly that the entire plan needs to be completely revised, or (2) that the statutory 15-year maximum life span of the plan is expiring.

A revision of a forest plan is a costly undertaking in terms of dollars and manpower and the Committee does not expect such an effort to be undertaken lightly. When required by changing conditions, the Forest Service should make every effort to address local changes in land management plans through the amendment process, reserving the revision option only for major, forest-wide changes in conditions.

For example, if a new powerline is proposed to be built across a forest, any modification of the applicable forest plan to permit the line to be built would be accomplished by an amendment, not a revision, and therefore the wilderness option would not have to be reexamined. It is only when a proposed change in management would significantly affect overall goals or uses for the entire forest that a revision would be made. An example of such a situation is the recent eruption of Mt. St. Helens. Because it affected so much

of the land in the Gifford Pinchot National Forest, including the forest's overall timber harvest schedule, the necessary changes in the applicable forest plan would likely be considered a revision of the plan. In this regard, the Committee notes that in the vast majority of cases the 10- to 15-year planning cycle established by the NFMA and in the existing regulations is short enough to accommodate most changes in circumstances without triggering more frequent plan "revisions". It is highly unlikely that conditions will change so dramatically during the 10- to 15-year planning cycle that anything more comprehensive than a plan amendment would be required.

It is not likely that primitive, semiprimitive, or motorized recreation use would change so rapidly over an entire national forest that the Forest Service or the Federal courts would be justified in concluding that the conditions in the forest are so significantly changed as to justify making a plan revision prior to the normal 10- to 15-year life span for the existing plan. For example, recreation use might increase in a specific area or areas resulting in changed conditions in the forest itself. In the judgment of the Forest Service, such changes could be met by amending the plan, as opposed to revising it. This is not to say that an increase in demand for recreation in a given area will automatically, in and of itself, constitute a valid requirement for even a plan amendment. In addition, it is not the Committee's intent, nor, in the judgment of the Committee, the intent of any Federal statute, to force the Forest Service into either plan amendments or revisions as a result of changes in use patterns in the national forests.

The Chief of the Forest Service has indicated that, in his view, most plans will be in existence for 10 years before they are revised. The Committee shares this view and anticipates that plans will not be revised in advance of their anticipated maximum life span absent extraordinary circumstances. The Committee understands and expects that the first generation plans will be completed by late 1985 in most cases and the time of revision for most plans will begin about 10 years from the date of implementation for each plan. Accordingly, the Committee expects that the wilderness option for any area will not be reexamined again until the plans have been in effect for 10 years, unless the area is specifically disignated as a wilderness study area by Congress.

The Committee notes that administrative or judicial appeals may mean that some of the first generation plans will not actually be implemented until the late 1980's, and plan revisions would not take place until a 10-year period has elapsed from the date each plan is implemented. If the full 15 years allowed by NFMA elapses before a revision is made, the wilderness option may not in some cases be reviewed until the year 2000 or later.

The question has also arisen as to whether a revision would be triggered if the Forest Service is directed by the courts to modify or rework an initial plan, or if the Forest Service withdraws an initial plan to correct technical errors or to address issues raised by an administrative appeal. The Committee wants to make it as clear as possible that any reworking of an initial plan for such reasons would not constitute a revision of the plan and would not require

the reconsideration of the wilderness option for the lands covered by the plan.

This position is based on the fact that court-ordered or administrative reworkings or modifications of a plan would most likely come about to resolve inadequacies in the preparation of the plan under the requirements of NFMA and other applicable laws. Since the NFMA, and the implementing regulations, specify that a plan revision will only occur when the Secretary finds that there has been a significant change in conditions in the forest planning unit, or at least once every 10 to 15 years, it is clear that such reworking or modification would not be a revision for at least two reasons: (1) the modification would not be the result of any significant change in conditions in the forest planning unit and (2) a plan must be properly prepared and implemented before it can be revised.

The fact that the wilderness option for roadless areas will be considered in the future during the planning process raises the hypothetical argument that areas not designated for wilderness must be managed to preserve their wilderness attributes so that they may be considered for such designation in the future. This interpretation, if accepted as correct, would result in all roadless areas being kept in "de facto" wilderness status indefinitely. Such a requirement would be detrimental to the orderly management of nonwilderness lands and the goals of the Forest and Rangeland Renewable Resources Planning Act of 1974.

To eliminate any possible misunderstanding on this point, the bill provides that areas not designated as wilderness, or wilderness study areas to the extent provided in the bill, need not be managed for the purpose of protecting their suitability for future wilderness designation pending revision of the initial plans. The intent is that these lands be managed for multiple uses in accordance with the land management plan.

The Forest Service already has statutory authority to manage roadless areas for multiple uses other than wilderness. The Committee wishes to make clear, however, that study of the wilderness option in future generations of "section 6" plans is required only for those lands that may be suited for wilderness designation at the time of the development of such future plans. During the lifetime of each generation of plans, then, the forest land and other resources can, in fact, be put to the uses that are authorized in the plan. In short, one plan will remain in effect until the second plan is implemented, and the forest will be managed in accordance with the plan that is in effect, even if such management may result in the land no longer being suited for wilderness.

Thus, it is likely that areas evaluated for wilderness suitability in one generation of plans may not physically qualify for wilderness consideration by the time the next generation of plans is prepared. For example, the Committee notes that many areas that were studied for wilderness in the RARE II, recommended for nonwilderness, and released administratively in April of 1979, may no longer qualify as suitable wilderness study areas as a result of approved multiple-use activities having been carried out.

Under this provision, it is the Committee's intent and understanding that the Forest Service may conduct a timber sale in a roadless area being managed for multiple-use purposes other than

wilderness and not be challenged on the basis that the area will be spoiled for consideration as wilderness in a future planning cycle. Once into a second-generation plan, the Forest Service may, of course, manage a roadless area according to that plan without the necessity of preserving the wilderness option for the third-generation planning process. Should the particular area still qualify for possible wilderness designation at the time of the third-generation planning process, which is likely in many cases, the wilderness option for the area would be considered at that time under the requirements of NFMA. In short, the wilderness option must be considered in each future planning generation for all of the areas in each planning unit that still possess the required wilderness attributes. There is no requirement, however, that these attributes be preserved for the purpose of maintaining the suitability of the affected areas for future evaluation as wilderness in the planning process.

In the Committee's judgment, the Forest Service is not required to manage multiple-use lands in a "de facto" wilderness manner. Of course, the Forest Service can, if it determines such action appropriate, manage lands to preserve their natural undeveloped characteristics if the applicable plan calls for such management. Likewise, the Forest Service can, if through the land management planning process it determines such action appropriate, provide for other multiple uses on lands that have not been designated as wilderness or as wilderness study areas by Congress. The Forest Service should be able to manage all nonwilderness lands in the manner determined appropriate through the land management planning process.

However, the bill also provides that lands recommended for wilderness designation in future generations of land management plans must be managed to protect their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by NFMA, and other applicable law.

In arriving at this position, the Committee has carefully considered and balanced the wishes and concerns of many varied interest groups involved in this issue, and wishes to emphasize the vital importance of completing and implementing the forest plans in Monroe and Polk Counties, Tennessee, and ending the state of uncertainty over appropriate land management that now exists in the national forests.

In order to eliminate the land management uncertainty with regard to as much of the National Forest System land in Monroe and Polk Counties, Tennessee, as possible, the bill provides that the release and sufficiency provisions of the bill also apply to National Forest System roadless lands in Monroe and Polk Counties, Tennessee, that are less than 5,000 acres in size.

Committee Consideration

HEARINGS

On Thursday, May 24, 1984, the Subcommittee on Soil and Water Conservation, Forestry, and Environment, chaired by Senator

Roger Jepsen, held a hearing on S. 2590 and H.R. 4263, the Tennessee Wilderness Act of 1984.

In his opening statement, Senator Jepsen noted that four other wilderness bills, New Hampshire, North Carolina, Vermont, and Wisconsin, have been moved through the Committee. These bills were followed with keen interest, and the effort and timeliness with which they moved through the legislative process indicates the good intentions of the Committee to see that all of the remaining wilderness bills under the jurisdiction of this Committee are considered in a timely and responsible manner. Senator Jepsen noted that because a compromise on release language for these wilderness bills has been agreed to, he believes the remaining wilderness bills will be completed in this session of Congress.

Mr. J. Lamar Beasley, Deputy Chief for Programs and Legislation, Forest Service, testified for the Department of Agriculture. Mr. Beasley stated that the Department prefers the House-passed bill if it is amended to incorporate the recently adopted Senate/House compromise language on the release of nonwilderness areas. He also stated that the Department is concerned that the release language is not statewide and does not deal with lands in the northern portion of the Cherokee National Forest. Mr. Beasley urged that the release provision be expanded to included all areas in the State.

A panel testifying from the State of Tennessee consisted of Mr. Walter L. Criley, Director of Planning, Department of Conservation, Nashville; Mr. Ralston Bailey, President, Cherokee Sportsman's Association, Bendon; and Mr. William H. Skelton, Baker, Worthington, Crossley, Stansberry and Woolf, Knoxville. All supported enactment of the legislation, including the Senate/House compromise release language.

Mr. Criley testified on behalf of Governor Lamar Alexandar and Commissioner of Conservation Charles A. Howell, III, and supported the wilderness designations in the bills. Mr. Criley stated that it was time to make the commitment to the future and proceed to make the legislative designations if these areas are going to be managed for wilderness. He also stated that the wilderness designation of these areas provides areas for wildlife habitat, protects threatened or endangered plants and animals, protects water quality and aquatic ecosystems, and provides hikers, campers, and hunters the opportunity to enjoy settings much like those found by the early settlers. Mr. Criley recommended four minor modifications to S. 2590: (1) change the maps and acreage figures for Citico Creek and Big Frog Addition to be consistent with those in H.R. 4263; (2) change the Big Frog Addition from a wilderness study area and, instead, direct the Forest Service to study this area for wilderness potential and possible designation during the preparation of the current land management plan; (3) alter the release language to reflect the agreed upon compromise between the House and Senate; and (4) apply the new release language only to the southern portion of the Cherokee National Forest in Polk and Monroe Counties.

Mr. Bailey testified on behalf of the citizens and sportsmen of Monroe and Polk Counties, Tennessee, who support wilderness protection for the areas in the bills. Mr. Bailey indicated the concern of sportsmen over the increasing encroachment on wildlife habitat

and the subsequent decrease in wildlife population. Logging operations and road construction are destroying the trout streams and wildlife habitats. Mr. Bailey also pointed out that without wilderness protection, timber harvest and road construction would cause extensive environmental damage due to the terrain, elevation, and slope of these areas.

Mr. Skelton testified as Chairperson of the Cherokee National Forest Wilderness Coalition, a coalition of Tennessee environmental groups interested in the preservation and use of wilderness areas. Having hiked these four areas included in the bills, he stated that he is personally able to say that they are worthy candidates for wilderness designation. He stated that the areas in the bills should be protected as wilderness to provide our citizens with opportunities to enjoy outstanding wilderness experiences in the future. Without such protection, these areas will be subjected to nonwilderness uses. Mr. Skelton urged the Committee to adopt the House-passed bill, adding the new compromise release language.

COMMITTEE MARKUP

The Committee met in open session on Thursday, September 13, 1984, to consider H.R. 4263.

In his opening statement, Chairman Helms noted that the Tennessee wilderness bill was just one of six bills to be considered by the Committee that would add new areas to the National Wilderness Preservation System. Consideration of these bills, together with the four wilderness bills considered by the Committee and signed into law earlier this year, indicates that the Committee takes seriously its responsibility to provide clear direction for forestry policy regarding wilderness and other matters. Chairman Helms noted that the preservation of these additonal wilderness areas will leave a legacy that will provide unlimited opportunity for primitive recreation and enjoyment for those choosing to visit the areas.

Senator Huddleston questioned the Forest Service on their efforts to obtain the privately-held mineral rights on existing wilderness areas and whether the exercise of those rights is a growing problem. Douglas MacCleery, Deputy Assistant Secretary for Natural Resources and Environment of the Department of Agriculture, responded that since most of the national forest lands in the eastern United States were acquired from private owners who retained the subsurface mineral rights, it would be very expensive to acquire all of those rights, and the Forest Service does not buy those rights when it makes new acquisitions. The Forest Service deals with this issue on a case-by-case basis, and if a private owner elects to exercise his mineral rights, the Forest Service looks at the impact it might have on the wilderness value and makes a decision as how best to proceed. This factor is also taken into consideration when the Department makes recommendations on which areas are appropriate for wilderness designation.

After a brief explanation of the bill, Chairman Helms, on behalf of Senators Baker and Sasser, offered an amendment that would make technical and clerical changes in the bill and incorporate the

compromise release language agreed to earlier this year. The amendment was adopted by voice vote.

By voice vote, the Committee ordered H.R. 4263 reported, as amended, with a recommendation that it pass.

Section-by-Section Analysis

Short title

Section 1 provides that the bill may be cited as the "Tennessee Wilderness Act of 1984".

Designation of wilderness areas

Section 2 designates certain lands in the Cherokee National Forest in the State of Tennessee, totaling approximately 24,942 acres, as wilderness areas and as components of the National Wilderness Preservation System as follows:

(1) approximately 5,055 acres, as generally depicted on a map entitled "Big Frog Wilderness—Proposed", dated April 1984, which shall be known as the Big Frog Wilderness;

(2) approximately 16,000 acres, as generally depicted on a map entitled "Citico Creek Wilderness—Proposed", dated April 1984, which shall be known as the Citico Creek Wilderness; and

(3) approximately 3,887 acres, as generally depicted on a map entitled "Bald River Gorge Wilderness—Proposed", dated April 1984, which shall be known as the Bald River Gorge Wilderness.

Maps and descriptions

Section 3 provides that, as soon as practicable after enactment of the bill, the Secretary of Agriculture is required to file maps and legal descriptions of the areas designated as wilderness in the bill with the House Committees on Agriculture and on Interior and Insular Affairs and with the Senate Committee on Agriculture, Nutrition, and Forestry. In addition, this section provides that the maps and descriptions shall have the same force and effect as if included in the bill, except that correction of clerical and typographical errors may be made by the Secretary. The maps and descriptions must be on file and available for public inspection in the Office of the Chief of the Forest Service.

Administration of wilderness

Section 4 requires that, subject to valid existing rights, each of the areas designated as wilderness by the bill be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act, except that any reference in those provisions to the effective date of that Act would be deemed to be a reference to the date of enactment of the bill.

Effect of RARE II

Section 5(a) contains congressional findings to the effect that the Department of Agriculture has completed the second roadless area review and evaluation (RARE II) and that Congress has made its own evaluation of National Forest System roadless areas in

Monroe and Polk Counties, Tennessee, including reviewing the environmental impacts associated with alternative uses of these areas.

Section 5(b) provides that Congress determines and directs, with respect to the National Forest System lands in Monroe and Polk Counties, Tennessee, that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands other than in Monroe and Polk Counties, Tennessee, such final environmental statement shall not be subject to judicial review;

(2) to the extent such lands were reviewed in the RARE II or otherwise referenced in subsection (d), except wilderness study areas, that review and evaluation or reference shall be considered to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System for the purposes of the initial land management plans required by law. Also, the Department shall not be required to review the wilderness option for such lands prior to the revisions of the plans, but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a 10-year cycle, or at least every 15 years, unless, prior to such time, the Secretary finds that conditions in a unit have significantly changed;

(3) to the extent such lands were reviewed in the RARE II final environmental statement, or otherwise referenced in the bill, and not designated as wilderness or for wilderness study, the nondesignated lands shall be managed for multiple use in accordance with land management plans, except that such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans; and

(4) in the event that revised land management plans are implemented, areas not recommended for wilderness designation in any such revisions need not be managed to protect their suitability for wilderness designation prior to or during revision of such plans, except as otherwise provided for in section 6(b) of the bill. Areas recommended for wilderness designation shall be managed to protect their suitability for wilderness designation.

Section 5(c) provides that, as used in the bill and in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, the term "revision" does not include an "amendment" to a plan.

Section 5(d) applies the release provisions of the bill to National Forest System roadless lands in Monroe and Polk Counties, Tennessee, that are less than 5,000 acres in size.

Designation of wilderness study areas

Section 6 designates two wilderness study areas in Tennessee (totaling approximately 7,800 acres) and requires the Secretary to review the suitability of these areas for wilderness preservation during the preparation of the initial land management plan re-

quired by law for the Cherokee National Forest. The two wilderness study areas are as follows:

(1) approximately 4,800 acres in the Cherokee National Forest, as generally depicted on a map entitled "Little Frog Wilderness Study Area—Proposed", dated April 1984, which shall be known as the Little Frog Wilderness Study Area; and

(2) approximately 3,000 acres in the Cherokee National Forest, as generally depicted on a map entitled "Big Frog Study Area", dated April 1984, which shall be known as the Big Frog Study Area.

Subject to valid existing rights, until Congress determines otherwise, the bill requires the Secretary to manage the Little Frog Wilderness Study Area so as to preserve its presently existing wilderness characteristics. This requirement for protection until Congress determines otherwise does not apply to the Big Frog Study Area.

Administration Views

On July 18, 1984, Chairman Helms received a report from Secretary of Agriculture John R. Block expressing the Department's support for the enactment of H.R. 4263 if amended as suggested in the report. This report, along with the portion of the May 24, 1984, testimony to the Subcommittee on Soil and Water Conservation, Forestry, and Environment presented by Mr. J. Lamar Beasley, Deputy Chief, Programs and Legislation of the Forest Service, on H.R. 4263 and S. 2590, the Senate companion bill, follow:

Department of Agriculture,
Office of the Secretary,
Washington, DC, July 18, 1984.

Hon. Jesse Helms,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

Dear Mr. Chairman: As you requested, here is our report on S. 2590, a bill "To designate certain lands in the Cherokee National Forest, Tennessee, as wilderness areas and wilderness study areas, and to allow management of certain lands for uses other than wilderness"; and the House Act H.R. 4263, a bill "To designate certain lands in the Cherokee National Forest, Tennessee, as wilderness areas, and to allow management of certain lands for uses other than wilderness."

The Department of Agriculture recommends that H.R. 4263, as passed by the House, be enacted rather than S. 2590. The House Act H.R. 4263 resolves a number of technical concerns we have with S. 2590 and H.R. 4263 as originally introduced. The new Senate/House compromise release language should be added in lieu of the present language in the bills.

The House Act H.R. 4263 would designate three new wilderness areas—Bald River Gorge, Citico Creek and Big Frog—totaling approximately 25,000 acres. It would designate two wilderness study areas—Little Frog and Big Frog Addition (Citizen's Proposal). Little Frog would be managed to protect its wilderness values until Congress decides otherwise, and Big Frog Addition (Citizen's Proposal) would be treated similarly to further planning areas.

The Department of Agriculture supports wilderness designation for Bald River Gorge which was recommended as wilderness in the RARE II Final Environmental Impact Statement. The Department can also support wilderness designation of Citico Creek and Big Frog. The 1975 Eastern Wilderness Act established Citico Creek and Big Frog as wilderness study areas. Citico Creek totals 15,700 acres and Big Frog totals 4,502 acres. Adjacent to Big Frog is the original 553-acre Big Frog Addition which is now included as part of the proposed Big Frog Wilderness in H.R. 4263.

Extensive studies and public involvement have been completed on Citico Creek and Big Frog. The original Big Frog Addition is adjacent to the Big Frog study area and was studied at the same time. Enclosed is a supplemental statement and a description of each area. The studies show both to be highly suitable for wilderness of each area. The studies show both to be highly suitable for wilderness with only limited resource values that would be foregone by wilderness designation.

S. 2590 differs from the House-passed version of H.R. 4263 in four provisions. First, S. 2590 would designate the original Big Frog Addition as a separate wilderness. H.R. 4263 would combine it with the Big Frog Wilderness. S. 2590 includes discussion of mineral activities in Section 3. H.R. 4263 does not contain such a provision because those activities were allowed only until December 31, 1983, under the Wilderness Act of 1964. Since that date has passed, this section is now unnecessary. Third, in S. 2590, action by Congress would be required for the Big Frog Addition (Citizen's Proposal), following wilderness study. Fourth, there are differences in the map references between the two bills. On each of these provisions, we favor the House language.

In the case of both bills, we recommend that they be amended to incorporate the new Senate/House compromise release language.

We are concerned that the bills are not statewide and do not resolve RARE II issues on lands in the northern portion of the Cherokee National Forest. We urge that the legislation be expanded to include all areas in the State.

It is estimated that surveying, planning, and related activities necessary to implement this legislation, if amended as we suggest, would be approximately $12,000 annually over the next 5 years.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK, *Secretary.*

Enclosure.

SUPPLEMENTAL DESCRIPTION

Big Frog

Big Frog Mountain is the most prominent feature of Polk County, Tennessee, and is located in the Cherokee National Forest. Big Frog is part of the Blue Ridge Province of the Southern Appalachians, and its geography is typical of that area. The terrain is rugged and steep, and the elevation ranges from 4,224 feet to only 1,480 feet.

Big Frog is a typical southern Appalachian, second growth forest of Virginia pine, upland hardwoods and cove hardwoods. Big Frog Wilderness study area was rated highest of the Cherokee National Forest roadless areas in the Roadless Area Review and Evaluation (RARE II) for wilderness attributes. This high rating reflects Big Frog's generally undisturbed character, continuous vegetative cover, isolation, and rugged, visually appealing terrain.

The likelihood of finding significant minerals in the area is remote. Timber production potential for the area is considered average for this portion of the Cherokee National Forest. The area is used primarily for dispersed types of recreation such as hiking and hunting.

Citico Creek

The Citico Creek Wilderness Study Area is in Monroe County, Tennessee, and is within the Cherokee National Forest. The area is part of the Blue Ridge Province, and is in the northern Unicoi Mountains. A long, high ridge on the eastern boundary and three steeply sloped ridges leading west from that main ridge dominate the study area. The terrain is rugged with elevations ranging from 1,400 feet to 4,600 feet. More than 90 percent of the area is slopes exceeding 30 percent.

The area's current vegetative cover is the direct result of human activity over the last 75 years. The dominant influences have been logging and wildfire in the early 1920's. Since then, there have been few human impacts. Forests cover about 99 percent of the area. The vegetation consists of second growth mixed hardwood or pine stands, most in the 40–60-year age brackets. Citico Creek rated above average for wilderness attributes. The area possesses features infrequently found through the surrounding area such as waterfalls and virgin timber. The likelihood of finding significant minerals in the area is remote. Timber production potential for the area varies from above average to average for this portion of the Cherokee National Forest. The area is used primarily for dispersed types of recreation such as hiking and hunting.

STATEMENT OF J. LAMAR BEASLEY, DEPUTY CHIEF, PROGRAMS AND LEGISLATION, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Before The Subcommittee on Soil and Water Conservation, Forestry and Environment, Committee on Agriculture, Nutrition and Forestry, United States Senate

Concerning S. 2590/H.R. 4263, S. 2551/H.R. 5076, S. 2598/H.R. 3788 and S. 1754, May 24, 1984

Mr. Chairman and Members of the Subcommittee; Thank you for the opportunity to join with the Subcommittee in its deliberation of several bills that would designate portions of the National Forests in Tennessee, Pennsylvania and Texas as components of the National Wilderness Preservation System. With the exception of the sufficiency and release language, the House-passed bills are nearly identical to their Senate counterparts. The house-passed bill H.R. 3788, designating wilderness in Texas, contains the recently adopted Senate-House compromise language on release of nonwilderness

areas. We prefer that language over that in the introduced Senate versions and urge its incorporation into the Pennsylvania and Tennessee bills.

* * * * * * *

S. 2590/H.R. 4263—The "Tennessee Wilderness Act of 1984."

S. 2590 and H.R. 4263 would designate three new wilderness areas on the Cherokee National Forest in Tennessee—Bald River Gorge, Citico Creek and Big Frog—totaling 24,942 acres. The Department recommends enactment of H.R. 4263 if amended to incorporate the new compromise release language.

The 3,887-acre Bald River Gorge was recommended as wilderness in the RARE II Final Environmental Impact Statement. Bald River Gorge is very scenic. The terrain is extremely rough for the southern Appalachians and includes a good sized stream with many small falls and rapids. The Department of Agriculture continues to support wilderness designation for this area.

The 1975 Eastern Wilderness Act established Citico Creek and Big Frog as wilderness study areas. Citico Creek totals 16,000 acres, and Big Frog totals 4,502 acres. Adjacent to Big Frog is the original 553-acre Big Frog Addition which is now included as part of the proposed Big Frog Wilderness in these bills. These areas were identified for further planning through RARE II.

Citico Creek is dominated by three steeply sloped ridges leading west from the main long, high ridge. The area possesses features infrequently found throughout the surrounding areas such as waterfalls and virgin timber. Big Frog is generally undisturbed in character with a continuous vegetative cover and rugged, scenic terrain.

Extensive studies and public involvement have been completed on these three areas. These studies are sufficiently far along that we can support designation of the areas as wilderness. Only limited resource development activity would be foregone by wilderness designation.

We are concerned that the bills are not Statewide and do not deal with lands in the northern portion of the Cherokee National Forest. We urge that the bills be expanded to include all areas in the State.

Cost Estimate

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that the enactment of H.R. 4263 would result in a cost to the Federal Government of approximately $60,000 over the next 5 fiscal years. In addition, receipts from the sale of timber could be reduced by less than $45,000 per year. However, small savings in land management planning costs over the next 3 years will result from certain areas being released from further wilderness review during the period of the initial land management plans.

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate, which is consistent with the Committee's cost estimate:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 18, 1984.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4263, the Tennessee Wilderness Act of 1984, as reported by the Senate Committee on Agriculture, Nutrition, and Forestry September 13, 1984.

This bill adds 24,942 acres of National Forest System lands in Tennessee to the national wilderness preservation system, and designates an additional 7,800 acres of land for wilderness review. Based on information from the National Forest Service (NFS) and the Bureau of Land Management (BLM), we estimate that additional costs to the federal government for surveying, planning and related activities necessary to implement these withdrawals will be approximately $60,000 over the five fiscal years beginning with 1985.

According to the provisions of the National Wilderness Preservation System Act, all timber in areas designated as units of the national wilderness preservation system is removed from the timber base of the national forest in which it is located. This results in a reduction of the annual potential yield of the forest. The annual loss of timber receipts resulting from this bill is expected to be less than $45,000 per year.

Lands designated as wilderness are also withdrawn from mineral activity under the terms of the National Wilderness Preservation Act. No significant loss of mineral receipts is expected to result from this bill, however, because little mineral potential has been found in lands involved.

All roadless areas in national forests not designated as wilderness or expressly excluded from further review by an act of the Congress are currently being reevaluated for their suitability for inclusion in the national wilderness preservation system. H.R. 4263 removes from this review all roadless areas in Tennessee included in the Department of Agriculture's second Roadless Area Review and Evaluation (RARE II) while the initial land management plans are prepared. This will result in a small savings in land management planning costs over the next three years.

Enactment of this bill would not significantly affect the budgets of state and local governments

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 4263. The bill would designate certain lands in the State of Tennessee as components of the National Wilderness Preservation

System. It would also designate certain lands in that State as wilderness study areas.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

Subject to valid existing rights, the Wilderness Act prohibits future harvesting of timber and future entry for mineral extraction on lands included in the National Wilderness Preservation System. Enactment of the bill will result in approximately 24,942 acres being placed in the National Wilderness Preservation System, and approximately 8,257 acres being designated as wilderness study areas, and, thereby, will restrict uses other than wilderness on such land.

Wilderness designation will result in restricting private individuals' motorized use of public lands. Activities which have previously occurred, such as firewood gathering, motorized access for hunting and fishing, and trail bike riding, will be terminated.

A wilderness permit may be required of individuals using certain wilderness areas and, therefore, limited personal information would be collected in administering the program. It is anticipated that the impact on personal privacy would be minimal.

The bill will not result in any significant additional paperwork or recordkeeping requirements.

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